

REVISOR'S REPORT

A NONSUBSTANTIVE REVISION
OF THE TEXAS PROBATE CODE
STATUTES RELATING TO DURABLE
POWERS OF ATTORNEY, GUARDIANSHIPS,
AND ALTERNATIVES TO GUARDIANSHIP

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1 estate. The court, if after hearing the suit is
2 satisfied that the necessity for the partition of the
3 real estate exists, may enter an order partitioning
4 the real estate to the owner of the real estate.

5 CHAPTER 1159. RENTING ESTATE PROPERTY

6 SUBCHAPTER A. RENTAL AND RETURN OF ESTATE PROPERTY

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18 CHAPTER 1159. RENTING ESTATE PROPERTY

19 SUBCHAPTER A. RENTAL AND RETURN OF ESTATE PROPERTY

20 Revised Law

21 Sec. 1159.001. RENTING ESTATE PROPERTY WITHOUT COURT ORDER.

22 (a) The guardian of an estate, without a court order, may rent any
23 of the estate property for one year or less, at public auction or
24 privately, as is considered to be in the best interests of the
25 estate.

26 (b) On the sworn complaint of any person interested in the
27 estate, the court shall require a guardian of the estate who,
28 without a court order, rents estate property to account to the
29 estate for the reasonable value of the rent of the property, to be
30 ascertained by the court on satisfactory evidence. (Tex. Prob.
31 Code, Secs. 839, 840.)

32 Source Law

33 Sec. 839. The guardian of an estate, without
34 court order, may rent any real property of the estate
35 or hire out any personal property of the estate for one
36 year or less, either at public auction or privately, as
37 may be deemed in the best interests of the estate.

38 Sec. 840. If property of the guardianship
39 estate is hired or rented without court order, on the
40 sworn complaint of any person interested in the

1 estate, the guardian of the estate shall be required to
2 account to the estate for the reasonable value of the
3 hire or rent of the property to be ascertained by the
4 court on satisfactory evidence.

5 Revisor's Note

6 (1) Section 839, Texas Probate Code, authorizes
7 a guardian of an estate to "rent . . . real property
8 . . . or hire out . . . personal property" of the
9 estate. The revised law substitutes an authorization
10 to "rent . . . [estate] property" for the quoted
11 language for the reasons that follow. First, the
12 revised law omits the reference to hiring out property
13 because hiring out property is synonymous with renting
14 property, and referring to the renting of property is
15 more consistent with modern usage. Similar changes
16 are made throughout this chapter with respect to
17 references to the renting and hiring out of estate
18 property. In addition, the revised law omits the
19 specific references to "real property" and "personal
20 property" in this context and refers only to
21 "property" because Section 311.005(4), Government
22 Code (Code Construction Act), applicable to the
23 revised law, defines "property" to include both real
24 and personal property and, absent an express
25 limitation, an authorization to rent property is an
26 authorization to rent both real and personal property.

27 (2) Section 840, Texas Probate Code, refers to
28 property of the "guardianship estate." Section 839,
29 Texas Probate Code, however, refers to property of the
30 "estate." Section 601(9), Texas Probate Code, revised
31 in this code as Section 1002.010, defines "estate" and
32 "guardianship estate" as, in part, the property of a
33 ward or deceased ward. The revised law substitutes
34 references to "estate" property for the references to
35 property of the "guardianship estate" for consistency
36 of terminology and because the terms "estate" and

1 "guardianship estate" are synonymous. Similar changes
2 are made throughout this chapter.

3 Revised Law

4 Sec. 1159.002. RENTING ESTATE PROPERTY WITH COURT ORDER.

5 (a) The guardian of an estate may file a written application with
6 the court setting forth the property the guardian seeks to rent. If
7 the proposed rental period is one year or more, the guardian of the
8 estate shall file a written application with the court setting
9 forth the property the guardian seeks to rent.

10 (b) If the court finds that granting an application filed
11 under Subsection (a) is in the interests of the estate, the court
12 shall grant the application and issue an order that:

13 (1) describes the property to be rented; and

14 (2) states whether the property will be rented at
15 public auction or privately, whether for cash or on credit, and if
16 on credit, the extent of the credit and the period for which the
17 property may be rented.

18 (c) If, under Subsection (b), the court orders property to
19 be rented at public auction, the court shall prescribe whether
20 notice of the auction shall be published or posted. (Tex. Prob.
21 Code, Sec. 841.)

22 Source Law

23 Sec. 841. A guardian of an estate may file a
24 written application with the court setting forth the
25 property sought to be hired or rented. If the proposed
26 rental period is one year or more, the guardian of the
27 estate shall file a written application with the court
28 setting forth the property sought to be hired or
29 rented. If the court finds that it would be in the
30 interests of the estate, the court shall grant the
31 application and issue an order that describes the
32 property to be hired or rented and states whether the
33 hiring or renting shall be at public auction or
34 privately, whether for cash or on credit, and, if on
35 credit, the extent of the credit and the period for
36 which the property may be rented. If the property is
37 to be hired or rented at public auction, the court
38 shall prescribe whether notice shall be published or
39 posted.

40 Revised Law

41 Sec. 1159.003. ESTATE PROPERTY RENTED ON CREDIT. (a)

42 Possession of estate property rented on credit may not be delivered

1 until the renter executes and delivers to the guardian of the estate
2 a note with good personal security for the amount of the rent. If
3 the property is delivered without the guardian receiving the
4 required security, the guardian and the sureties on the guardian's
5 bond are liable for the full amount of the rent.

6 (b) Subsection (a) does not apply to a rental that is paid in
7 installments in advance of the period to which the installments
8 relate. (Tex. Prob. Code, Sec. 843.)

9 Source Law

10 Sec. 843. When property is hired or rented on
11 credit, possession of the property may not be
12 delivered until the hirer or renter has executed and
13 delivered to the guardian of the estate a note with
14 good personal security for the amount of the hire or
15 rental. If the property that is hired or rented is
16 delivered without the receipt of the security required
17 under this section, the guardian and the sureties on
18 the bond of the guardian shall be liable for the full
19 amount of the hire or rental. This section does not
20 apply to a hire or rental that is paid in installments
21 in advance of the period of time to which they relate.

22 Revised Law

23 Sec. 1159.004. CONDITION OF RETURNED ESTATE PROPERTY. (a)
24 Estate property that is rented must be returned to the estate's
25 possession in as good a condition, except for reasonable wear and
26 tear, as when the property was rented.

27 (b) The guardian of the estate shall:

28 (1) ensure that rented estate property is returned in
29 the condition required by Subsection (a);

30 (2) report to the court any damage to, or loss or
31 destruction of, estate property rented under this chapter; and

32 (3) ask the court for the authority to take any
33 necessary action.

34 (c) A guardian who fails to act as required by this section
35 and the sureties on the guardian's bond are liable to the estate for
36 any loss or damage suffered as a result of the guardian's failure.
37 (Tex. Prob. Code, Sec. 844.)

38 Source Law

39 Sec. 844. All property that is hired or rented,
40 with or without a court order, shall be returned to the
41 possession of the guardianship in as good a condition,

1 reasonable wear and tear excepted, as when the
2 property was hired or rented. It shall be the duty and
3 responsibility of the guardian of the estate to see
4 that the property is returned as provided by this
5 section, to report to the court any loss, damage, or
6 destruction of property that is hired or rented under
7 this chapter, and to ask for authority to take action
8 as is necessary. If the guardian fails to act as
9 required by this section, the guardian and the
10 sureties on the bond of the guardian shall be liable to
11 the guardianship for any loss or damage suffered
12 through the fault of the guardian to act as required
13 under this section.

14 Revisor's Note

15 (1) Section 844, Texas Probate Code, requires
16 that "[a]ll property" rented "with or without a court
17 order" be returned in a certain condition. The revised
18 law omits "with or without a court order" as
19 unnecessary because the requirement applies to "all"
20 estate property rented, which includes property rented
21 with a court order and property rented without a court
22 order.

23 (2) Section 844, Texas Probate Code, requires
24 that rented estate property be returned to the
25 "guardianship" in a specified condition and further
26 provides that a guardian of the estate who fails to act
27 in a specified manner and the sureties on the
28 guardian's bond are liable to the "guardianship" for
29 loss or damage suffered. A guardianship of an estate
30 is a court-created legal arrangement under which the
31 guardian has certain rights and responsibilities with
32 respect to the ward's property. "Estate," however, is
33 the term used to describe the total property of the
34 ward. The revised law substitutes references to the
35 "estate" for the references to the "guardianship" in
36 these contexts for accuracy. Rented property is not
37 returned to the legal arrangement of the guardianship,
38 but rather is returned for inclusion in the totality of
39 the ward's property. Likewise, the liability of the
40 guardian and sureties is not to the legal arrangement
41 of the guardianship, but rather is a liability to make

1 whole the ward's property.

2 (3) Section 844, Texas Probate Code, refers to
3 property that is rented under "this chapter," meaning
4 Chapter XIII, Texas Probate Code. Although Chapter
5 XIII is revised as Title 3 of this code, the revised
6 law substitutes a reference to this chapter of the
7 revised law because this chapter contains the revision
8 of the provisions of Chapter XIII, Texas Probate Code,
9 that relate to the renting of estate property.

10 Revised Law

11 Sec. 1159.005. COMPLAINT FOR FAILURE TO RENT. (a) A person
12 interested in a guardianship may:

13 (1) file a written and sworn complaint in the court in
14 which the estate is pending; and

15 (2) have the guardian of the estate cited to appear and
16 show cause why the guardian did not rent any estate property.

17 (b) The court, on hearing the complaint, shall issue an
18 order that is in the best interests of the estate. (Tex. Prob.
19 Code, Sec. 842.)

20 Source Law

21 Sec. 842. A person interested in a guardianship
22 may file a written and sworn complaint in a court in
23 which the estate is pending and cause the guardian of
24 the estate to be cited to appear and show cause why the
25 guardian did not hire or rent any property of the
26 estate. The court, on hearing the complaint, shall
27 make an order that is in the best interests of the
28 estate.

29 [Sections 1159.006-1159.050 reserved for expansion]

30 SUBCHAPTER B. REPORT ON RENTED ESTATE PROPERTY

31 Revised Law

32 Sec. 1159.051. REPORTS CONCERNING RENTALS. (a) A guardian
33 of an estate who rents estate property with an appraised value of
34 \$3,000 or more, not later than the 30th day after the date of the
35 rental, shall file with the court a sworn and written report
36 stating:

37 (1) the property rented and the property's appraised
38 value;

(2) the date the property was rented and whether the rental occurred at public auction or privately;

(3) the name of the person renting the property;

(4) the rental amount;

(5) whether the rental was for cash or on credit; and

(6) if the rental was on credit, the length of time, the terms, and the security received for the credit.

(b) A guardian of an estate who rents estate property with an appraised value of less than \$3,000 may report the rental in the next annual or final account that must be filed as required by law. (Tex. Prob. Code, Sec. 845.)

Source Law

Sec. 845. (a) When any property of the guardianship estate with an appraised value of \$3,000 or more has been hired or rented, the guardian of the estate, not later than the 30th day after the date of the hire or rental, shall file with the court a sworn and written report that states:

(1) the property involved and its appraised value;

(2) the date of hiring or renting, and whether at public auction or privately;

(3) the name of the person who hired or rented the property;

(4) the amount of the hiring or rental;

(5) whether the hiring or rental was for cash or on credit, and, if on credit, the length of time, the terms, and the security taken for the hiring or rental.

(b) When the value of the property involved is less than \$3,000, the hiring or renting of the property may be reported in the next annual or final account that is to be filed as required by law.

Revised Law

Sec. 1159.052. COURT ACTION ON REPORT. (a) After the fifth day after the date the report of the rental is filed, the court shall:

(1) examine the report; and

(2) by order approve and confirm the rental if the court finds the rental just and reasonable.

(b) If the court disapproves the rental, the guardianship is not bound and the court may order another offering for rent of the property in the same manner and subject to the provisions of this chapter.

1 (c) If the court approves the rental and it later appears
2 that, by reason of the fault of the guardian of the estate, the
3 property was not rented for the property's reasonable value, the
4 court shall have the guardian and the sureties on the guardian's
5 bond appear and show cause why the reasonable value of the rental of
6 the property should not be adjudged against the guardian or
7 sureties. (Tex. Prob. Code, Sec. 846.)

8 Source Law

9 Sec. 846. After five days from the time the
10 report of the hiring or rental is filed, the court
11 shall examine the report and shall approve and confirm
12 the hiring or rental by court order if the court finds
13 the hire or rental just and reasonable. If the court
14 disapproves the hiring or rental, the guardianship may
15 not be bound and the court may order another offering
16 of the property for hire or rent in the same manner and
17 subject to the same rules provided in this chapter for
18 property for hire or rent. If the report has been
19 approved by the court and it later appears that, due to
20 the fault of the guardian of the estate, the property
21 has not been hired or rented for its reasonable value,
22 the court shall cause the guardian of the estate and
23 the sureties on the bond of the guardian to appear and
24 show cause why the reasonable value of the hire or
25 rental of the property should not be adjudged against
26 the guardian or sureties.

27 Revisor's Note

28 (1) Section 846, Texas Probate Code, requires
29 the court to examine a report of the rental of estate
30 property and approve or disapprove the rental after
31 five days from the "time" the report is filed. The
32 revised law substitutes "date" for "time" because the
33 specific time of day of the filing is inconsequential.
34 Under general rules of statutory construction, for
35 purposes of computing a period of days, the first day
36 is excluded. Therefore, the time of day the report is
37 filed is irrelevant in determining whether the
38 examination and approval occurred after the period
39 prescribed by Section 846, and the revised law is
40 drafted accordingly.

41 (2) Section 846, Texas Probate Code, provides
42 that if the court disapproves a rental of estate
43 property, the court may order another offering of the

1 property subject to the "rules provided in this
2 chapter for property for hire or rent." Chapter XIII,
3 Texas Probate Code, is the chapter to which the quoted
4 language refers. The revised law substitutes a
5 reference to "this chapter" for the reference to
6 Chapter XIII for the reason stated in Revisor's Note
7 (3) to Section 1159.004 of this chapter. In addition,
8 the revised law substitutes a reference to
9 "provisions" for the reference to "rules" for accuracy
10 and clarity. The portions of Chapter XIII that are
11 revised as this chapter are not properly considered as
12 "rules," but rather are statutes that apply without
13 any associated rulemaking process.

14 (3) Section 846, Texas Probate Code, provides
15 that the court may take certain actions if the "report
16 [of the rental of estate property] has been approved by
17 the court" and it subsequently appears that the
18 property was not rented for the property's reasonable
19 value. Preceding references in Section 846, however,
20 require the court to examine the report and approve or
21 disapprove the "rental" of the property. For
22 consistency of terminology, the revised law
23 substitutes a reference to the court approving the
24 "rental" for the quoted phrase.

25 CHAPTER 1160. MATTERS RELATING TO MINERAL PROPERTIES
26 SUBCHAPTER A. GENERAL PROVISIONS

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3 CHAPTER 1160. MATTERS RELATING TO MINERAL PROPERTIES
4 SUBCHAPTER A. GENERAL PROVISIONS

5 Revised Law

6 Sec. 1160.001. DEFINITIONS. In this chapter:

7 (1) "Gas" includes all liquid hydrocarbons in the
8 gaseous phase in the reservoir.

9 (2) "Land" includes minerals or an interest in
10 minerals in place.

11 (3) "Mineral development" includes exploration for,
12 whether by geophysical or other means, drilling for, mining for,
13 development of, operations in connection with, production of, and
14 saving of oil, other liquid hydrocarbons, gas, gaseous elements,
15 sulphur, metals, and all other minerals, whether solid or
16 otherwise.

17 (4) "Property" includes land, minerals in place,
18 whether solid, liquid, or gaseous, and an interest of any kind in
19 the property, including a royalty interest, owned by an estate.
20 (Tex. Prob. Code, Sec. 847(a); New.)

21 Source Law

22 Sec. 847. (a) In this subpart:

23 (1) "Land" or "interest in land" includes
24 minerals or any interest in any of the minerals in
25 place.

26 (2) "Mineral development" includes
27 exploration, by geophysical or by any other means,
28 drilling, mining, developing, and operating, and
29 producing and saving oil, other liquid hydrocarbons,
30 gas (including all liquid hydrocarbons in the gaseous
31 phase in the reservoir), gaseous elements, sulphur,
32 metals, and all other minerals, solid or otherwise.

33 (3) "Property" includes land, minerals in
34 place, whether solid, liquid, or gaseous, as well as an
35 interest of any kind in the property, including
36 royalty, owned by the estate.

37 Revisor's Note

38 (1) Section 847(a)(1), Texas Probate Code,
39 defines "land" and "interest in land." The revised law
40 omits the reference to "interest in land" because the
41 term is not used elsewhere in Subpart J, Part 4,

Chapter XIII, Texas Probate Code, revised as this chapter.

(2) The definition of "gas" is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

[Sections 1160.002-1160.050 reserved for expansion]

SUBCHAPTER B. MINERAL LEASES AFTER PUBLIC NOTICE

Revised Law

Sec. 1160.051. AUTHORIZATION FOR LEASING OF MINERALS. (a) The court in which a guardianship proceeding is pending may authorize the guardian, acting solely under a court order, to make, execute, and deliver a lease, with or without a unitization clause or pooling provision, providing for the exploration for and development and production of oil, other liquid hydrocarbons, gas, metals and other solid minerals, and other minerals, or any of those minerals in place, belonging to the estate.

(b) A lease authorized by Subsection (a) must be made and entered into under and in conformity with this subchapter. (Tex. Prob. Code, Secs. 847(b), (c).)

Source Law

(b) A guardian acting solely under an order of a court, may be authorized by the court in which the guardianship proceeding is pending to make, execute, and deliver leases, with or without unitization clauses or pooling provisions, that provide for the exploration for, and development and production of, oil, other liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase), metals, and other solid minerals, and other minerals, or any of those minerals in place, belonging to the estate.

(c) All leases authorized by Subsection (b) of this section, with or without pooling provisions or unitization clauses, shall be made and entered into pursuant to and in conformity with Subsections (d)-(m) of this section.

Revisor's Note

(1) Section 847(b), Texas Probate Code, refers to gas "(including all liquid hydrocarbons in the gaseous phase)." The revised law omits the quoted language because Section 1160.001(1) of this chapter

1 defines "gas" to include "all liquid hydrocarbons in
2 the gaseous phase in the reservoir." Although Section
3 1160.001(1) refers to hydrocarbons "in the reservoir"
4 and Section 847(b) does not include that reference, it
5 is clear from the context that Section 847(b) is
6 intended to apply to gas in the reservoir, and the
7 revised law is drafted accordingly. Similar changes
8 are made throughout this chapter.

9 (2) Section 847(c), Texas Probate Code, refers
10 to "leases authorized by Subsection (b) of this
11 section, with or without pooling provisions or
12 unitization clauses." Section 847(b), Texas Probate
13 Code, is revised as Subsection (a) of this section.
14 The revised law omits the reference to "with or without
15 pooling provisions or unitization clauses" because
16 Subsection (a) of this section authorizes a lease with
17 or without a unitization clause or pooling provision.

18 Revised Law

19 Sec. 1160.052. LEASE APPLICATION. (a) The guardian of the
20 estate shall file with the court a written application for
21 authority to lease estate property for mineral exploration and
22 development, with or without a pooling provision or unitization
23 clause.

24 (b) The lease application must:

25 (1) describe the property fully enough by reference to
26 the amount of acreage, the survey name or number, or the abstract
27 number, or by another method that adequately identifies the
28 property and the property's location in the county in which the
29 property is located;

30 (2) specify the interest thought to be owned by the
31 estate, if less than the whole, but request authority to include all
32 of the interest owned by the estate if that is the intention; and

33 (3) set out the reasons the estate property described
34 in the application should be leased.

1 (c) The lease application is not required to set out or
2 suggest:

- 3 (1) the name of any proposed lessee; or
4 (2) the terms, provisions, or form of any desired
5 lease. (Tex. Prob. Code, Sec. 847(d).)

6 Source Law

7 (d) The guardian of the estate shall file a
8 written application with the court seeking authority
9 to lease property of the estate for mineral
10 exploration and development, with or without pooling
11 provisions or unitization clauses. The name of any
12 proposed lessee or the terms, provisions, or form of
13 any desired lease do not need to be set out or
14 suggested in the application. The application shall:

15 (1) describe the property fully enough by
16 reference to the amount of acreage, the survey name or
17 number, abstract number, or other description that
18 adequately identifies the property and its location in
19 the county in which the property is located;

20 (2) specify the interest thought to be
21 owned by the estate if less than the whole, but asking
22 for authority to include all interest owned by the
23 estate if that is the intention; and

24 (3) set out the reasons why the particular
25 property of the estate should be leased.

26 Revised Law

27 Sec. 1160.053. SCHEDULING OF HEARING ON APPLICATION;
28 CONTINUANCE. (a) Immediately after the filing of a lease
29 application under Section 1160.052, the county clerk shall call the
30 filing of the application to the court's attention. The judge shall
31 promptly make and enter a brief order designating the time and place
32 for hearing the application.

33 (b) If the hearing is not held at the time originally
34 designated by the court or by a timely continuance order entered,
35 the hearing shall be continued automatically without further notice
36 to the same time on the following day, other than Sundays and
37 holidays on which the county courthouse is officially closed, and
38 from day to day until the lease application is finally acted on and
39 disposed of by court order. Notice of an automatic continuance is
40 not required. (Tex. Prob. Code, Sec. 847(e).)

41 Source Law

42 (e) When an application to lease is filed, under
43 this section, the county clerk shall immediately call
44 the filing of the application to the attention of the
45 court. The judge shall promptly make and enter a brief

1 order designating the time and place for the hearing of
2 the application. If the hearing does not take place at
3 the time originally designated by the court or by
4 timely order of continuance duly entered, the hearing
5 shall be automatically continued without further
6 notice to the same hour or time the following day,
7 except Sundays and holidays on which the county
8 courthouse is officially closed to business, and from
9 day to day until the application is finally acted on
10 and disposed of by order of the court. No notice of the
11 automatic continuance shall be required.

12 Revisor's Note

13 Section 847(e), Texas Probate Code, refers to a
14 continuance order "duly" entered. The revised law
15 omits "duly" in this context because the word does not
16 add to the clear meaning of the law. The requirement
17 that the order be entered is sufficient to convey that
18 the order must have been entered in the manner required
19 by law.

20 Revised Law

21 Sec. 1160.054. NOTICE OF HEARING ON APPLICATION. (a) At
22 least 10 days before the date set for the hearing on a lease
23 application filed under Section 1160.052, excluding the date of
24 notice and the date set for the hearing, the guardian of the estate
25 shall give notice of the hearing by:

26 (1) publishing the notice in one issue of a newspaper
27 of general circulation in the county in which the proceeding is
28 pending; or

29 (2) if there is no newspaper in the county, posting the
30 notice or having the notice posted.

31 (b) If the notice is published, the date of notice is the
32 date printed on the newspaper.

33 (c) The notice must:

34 (1) be dated;

35 (2) be directed to all persons interested in the
36 estate;

37 (3) state the date on which the lease application was
38 filed;

39 (4) describe briefly the property sought to be leased;

40 (5) specify the fractional interest sought to be

1 leased if less than the entire interest in the tract identified; and
2 (6) state the time and place designated by the judge
3 for the hearing. (Tex. Prob. Code, Sec. 847(f).)

4 Source Law

5 (f) The guardian shall give written notice
6 directed to all persons interested in the estate of the
7 time designated by the judge for the hearing on the
8 application to lease. The notice must be dated, state
9 the date on which the application was filed, describe
10 briefly the property sought to be leased, specify the
11 fractional interest sought to be leased if less than
12 the entire interest in the tract identified, and state
13 the time and place designated by the judge for the
14 hearing. Exclusive of the date of notice and of the
15 date set for hearing, the guardian shall give at least
16 10 days' notice by publishing in one issue of a
17 newspaper of general circulation in the county in
18 which the proceeding is pending or by posting if there
19 is no newspaper in the county. Posting under this
20 section may be done at the guardian's instance. The
21 date of notice when published shall be the date the
22 newspaper bears.

23 Revisor's Note

24 Section 847(f), Texas Probate Code, requires the
25 guardian of the estate to give written notice of the
26 time designated by the judge for the hearing on the
27 application to lease. The revised law omits the
28 reference to the "written" notice because the notice
29 is required to be either published in a newspaper or
30 posted, both of which require a writing. The revised
31 law omits the reference to the time designated by the
32 judge for the hearing because that information is
33 specified in the contents of the notice.

34 Revised Law

35 Sec. 1160.055. REQUIREMENTS REGARDING ORDER AND NOTICE
36 MANDATORY. A court order authorizing any act to be performed in
37 accordance with a lease application filed under Section 1160.052 is
38 void in the absence of:

39 (1) a written order originally designating a time and
40 place for the hearing;

41 (2) a notice issued by the guardian of the estate in
42 compliance with the order; and

43 (3) proof of publication or posting of the notice as

1 required under Section 1160.054. (Tex. Prob. Code, Sec. 847(g).)

2 Source Law

3 (g) A court order authorizing any acts to be
4 performed pursuant to the application is null and void
5 in the absence of:

6 (1) a written order originally designating
7 a time and place for hearing;

8 (2) a notice issued by the guardian of the
9 estate in compliance with the order; and

10 (3) proof of publication or posting of the
11 notice as required.

12 Revisor's Note

13 Section 847(g), Texas Probate Code, refers to an
14 order that is "null and void." The revised law omits
15 the reference to "null" because in context that term is
16 included in the meaning of "void."

17 Revised Law

18 Sec. 1160.056. HEARING ON APPLICATION; ORDER. (a) At the
19 time and place designated for the hearing under Section
20 1160.053(a), or at the time to which the hearing is continued as
21 provided by Section 1160.053(b), the judge shall:

22 (1) hear a lease application filed under Section
23 1160.052; and

24 (2) require proof as to the necessity or advisability
25 of leasing for mineral development the property described in the
26 application and the notice.

27 (b) The judge shall enter an order authorizing one or more
28 leases affecting and covering the property or portions of property
29 described in the lease application, with or without pooling
30 provisions or unitization clauses, and with or without cash
31 consideration if considered by the court to be in the best interest
32 of the estate, if the judge is satisfied that:

33 (1) the application is in proper form;

34 (2) notice has been given in the manner and for the
35 time required by law;

36 (3) proof of necessity or advisability of leasing is
37 sufficient; and

38 (4) the application should be granted.

1 (c) The order must contain:

2 (1) the name of the lessee;

3 (2) any actual cash consideration to be paid by the
4 lessee;

5 (3) a finding that the requirements of Subsection (b)
6 have been satisfied; and

7 (4) one of the following findings:

8 (A) a finding that the guardian of the estate is
9 exempt by law from giving a bond; or

10 (B) if the guardian of the estate is required to
11 give a bond, a finding as to whether the guardian's general bond on
12 file is sufficient to protect the personal property on hand,
13 including any cash bonus to be paid.

14 (d) If the court finds the general bond insufficient to meet
15 the requirements of Subsection (c)(4)(B), the order must show the
16 amount of increased or additional bond required to cover the
17 deficiency.

18 (e) A complete exhibit copy, either written or printed, of
19 each authorized lease must be set out in, attached to, incorporated
20 by reference in, or made part of the order. The exhibit copy must
21 show:

22 (1) the name of the lessee;

23 (2) the date of the lease;

24 (3) an adequate description of the property being
25 leased;

26 (4) any delay rental to be paid to defer commencement
27 of operations; and

28 (5) all other authorized terms and provisions.

29 (f) If the date of a lease does not appear in the exhibit
30 copy of the lease or in the order, the date of the order is
31 considered for all purposes to be the date of the lease.

32 (g) If the name or address of a depository bank for
33 receiving rental is not shown in the exhibit copy of a lease, the
34 guardian of the estate may insert the name or address, or cause the

1 name or address to be inserted, in the lease at the time of the
2 lease's execution or at any other time agreeable to the lessee or
3 the lessee's successors or assigns. (Tex. Prob. Code, Secs.
4 847(h), (i).)

5 Source Law

6 (h) At the time and place designated for the
7 hearing, or at any time to which the hearing has been
8 continued as provided by this section, the judge shall
9 hear the application and require proof as to the
10 necessity or advisability of leasing for mineral
11 development the property described in the application
12 and in the notice. If the judge is satisfied that the
13 application is in due form, that notice has been duly
14 given in the manner and for the time required by law,
15 that the proof of necessity or advisability of leasing
16 is sufficient, and that the application should be
17 granted, the judge shall enter an order so finding and
18 authorizing the making of one or more leases, with or
19 without pooling provisions or unitization clauses
20 (with or without cash consideration if deemed by the
21 court to be in the best interest of the estate) that
22 affects and covers the property or portions of the
23 property described in the application. The order that
24 authorizes the leasing must also set out the following
25 mandatory contents:

26 (1) the name of the lessee;

27 (2) the actual cash consideration, if any,
28 to be paid by the lessee;

29 (3) a finding that the guardian is exempt
30 by law from giving bond if that is a fact, and if the
31 guardian is required to give a bond, then a finding as
32 to whether or not the guardian's general bond on file
33 is sufficient to protect the personal property on
34 hand, inclusive of any cash bonus to be paid; but if
35 the court finds the general bond is insufficient to
36 meet these requirements, the order shall show the
37 amount of increased or additional bond required to
38 cover the deficiency;

39 (4) a complete exhibit copy, either
40 written or printed, of each lease authorized to be
41 made, either set out in, attached to, incorporated by
42 reference in, or made a part of the order.

43 (i) An exhibit copy must show the name of the
44 lessee, the date of the lease, an adequate description
45 of the property being leased, the delay rental, if any,
46 to be paid to defer commencement of operations, and all
47 other terms and provisions authorized. If no date of
48 the lease appears in the exhibit copy or in the court's
49 order, then the date of the court's order is considered
50 for all purposes as the date of the authorized lease.
51 If the name and address of a depository bank for
52 receiving rental is not shown in the exhibit copy, the
53 name or address of the depository bank may be inserted
54 or caused to be inserted in the lease by the estate's
55 guardian at the time of its execution or at any other
56 time agreeable to the lessee, his successors, or
57 assigns.

58 Revisor's Note

59 Section 847(h), Texas Probate Code, refers to
60 notice that has been "duly" given in the manner and for

1 the time required by law. The revised law omits "duly"
2 in this context because the word does not add to the
3 clear meaning of the law. The requirement that notice
4 be given in the manner and for the time required by law
5 is sufficient to convey that the notice must have been
6 given as required by law.

7 Revised Law

8 Sec. 1160.057. MAKING OF LEASE ON GRANTING OF APPLICATION.

9 (a) If on the hearing of a lease application filed under Section
10 1160.052 the court grants the application, the guardian of the
11 estate may make the lease, as evidenced by the exhibit copies, in
12 accordance with the order.

13 (b) The lease must be made not later than the 30th day after
14 the date of the order unless an extension is granted by the court on
15 a sworn application showing good cause.

16 (c) It is not necessary for the judge to make an order
17 confirming the lease. (Tex. Prob. Code, Sec. 847(j) (part).)

18 Source Law

19 (j) On the hearing of an application for
20 authority to lease, if the court grants the authority
21 to lease, the guardian of the estate is fully
22 authorized to make, not later than the 30th day after
23 the date of the judge's order, unless an extension is
24 granted by the court on a sworn application showing
25 good cause, the lease as evidenced by the true exhibit
26 copies in accordance with the order. . . . It is not
27 necessary for the judge to make any order confirming
28 the leases.

29 Revisor's Note

30 Section 847(j), Texas Probate Code, refers to
31 "true exhibit copies" of a lease. The revised law
32 omits "true" because the word does not add to the clear
33 meaning of the law. For example, a document purporting
34 to be a copy is not a copy if it is different from the
35 original document.

36 Revised Law

37 Sec. 1160.058. BOND REQUIREMENTS. (a) Unless the guardian
38 of the estate is not required to give a general bond, a lease for
39 which a cash consideration is required, although ordered, executed,

1 and delivered, is not valid:

2 (1) unless the order authorizing the lease makes a
3 finding with respect to the general bond; and

4 (2) if the general bond has been found insufficient,
5 until:

6 (A) the bond has been increased or an additional
7 bond given with the sureties required by law, as required by the
8 order; and

9 (B) the increased or additional bond has been
10 approved by the judge and filed with the clerk of the court in which
11 the proceeding is pending.

12 (b) If two or more leases of different land are authorized
13 by the same order, the general bond shall be increased or additional
14 bonds given to cover all of the leases. (Tex. Prob. Code, Sec.
15 847(j) (part).)

16 Source Law

17 (j) . . . Unless the guardian is not required
18 to give a general bond, a lease for which a cash
19 consideration is required, though ordered, executed,
20 and delivered, is not valid unless the order
21 authorizing the lease actually makes a finding with
22 respect to the general bond. If the general bond has
23 been found insufficient, the lease is not valid until
24 the bond has been increased or an additional bond given
25 with the sureties required by law as required by the
26 court order, has been approved by the judge, and has
27 been filed with the clerk of the court in which the
28 proceeding is pending. If two or more leases on
29 different lands are authorized by the same order, the
30 general bond shall be increased or additional bonds
31 given to cover all. . . .

32 Revised Law

33 Sec. 1160.059. TERM OF LEASE BINDING. A lease executed and
34 delivered in compliance with this subchapter is valid and binding
35 on the property or interest owned by the estate and covered by the
36 lease for the full term provided by the lease, subject only to the
37 lease's terms and conditions, even if the primary term extends
38 beyond the date the estate is closed in accordance with law. For
39 the lease to be valid and binding under this subchapter, the
40 authorized primary term of the lease may not exceed five years,
41 subject to the lease terms and provisions extending the lease

beyond the primary term by:

(1) paying production;

(2) bona fide drilling or reworking operations, whether in or on the same well or wells or an additional well or wells without a cessation of operations of more than 60 consecutive days before production has been restored or obtained; or

(3) a shut-in gas well. (Tex. Prob. Code, Sec. 847(k).)

Source Law

(k) Every lease when executed and delivered in compliance with the rules set out in this section shall be valid and binding on the property or interest owned by the estate and covered by the lease for the full duration of the term as provided in the lease and is subject only to its terms and conditions even though the primary term extends beyond the date when the estate is closed in accordance with law. In order for a lease to be valid and binding on the property or interest owned by the estate under this section, the authorized primary term in the lease may not exceed five years, subject to terms and provisions of the lease extending it beyond the primary term by paying production, by bona fide drilling or reworking operations, whether in or on the same or additional well or wells with no cessation of operations of more than 60 consecutive days before production has been restored or obtained, or by the provisions of the lease relating to a shut-in gas well.

Revisor's Note

Section 847(k), Texas Probate Code, refers to a lease executed and delivered in compliance with "the rules set out in this section" and to a lease being valid and binding under "this section." The revised law substitutes a reference to "this subchapter" for the quoted language because the substantive requirements of Section 847, Texas Probate Code, that relate to mineral leases are revised in this subchapter.

Revised Law

Sec. 1160.060. AMENDMENT OF LEASE REGARDING EFFECT OF SHUT-IN GAS WELL. (a) An oil, gas, and mineral lease executed by a guardian of an estate under this chapter or former Chapter XIII, Texas Probate Code, may be amended by an instrument that provides

1 that a shut-in gas well on the land covered by the lease or on land
2 pooled with all or part of the land covered by the lease continues
3 the lease in effect after the lease's five-year primary term.

4 (b) The guardian of the estate, with court approval, shall
5 execute the instrument according to the terms and conditions
6 prescribed in the instrument. (Tex. Prob. Code, Sec. 847(m).)

7 Source Law

8 (m) Any oil, gas, and mineral lease executed by
9 a guardian under this chapter may be amended by an
10 instrument that provides that a shut-in gas well on the
11 land covered by the lease or on land pooled with all or
12 some part of the land covered by the lease shall
13 continue the lease in force after its five-year
14 primary term. The instrument shall be executed by the
15 guardian, with court approval, and on the terms and
16 conditions as may be prescribed in the instrument.

17 Revisor's Note

18 Section 847(m), Texas Probate Code, refers to an
19 oil, gas, and mineral lease executed by a guardian
20 under "this chapter," meaning Chapter XIII, Texas
21 Probate Code. Although Chapter XIII, Texas Probate
22 Code, is revised in Title 3 of this code, the revised
23 law retains the reference to "this chapter" rather
24 than substituting a reference to "this title" because
25 all of the provisions of Chapter XIII that relate to an
26 oil, gas, and mineral lease executed by a guardian are
27 revised in this chapter. In addition, the revised law
28 references "former Chapter XIII, Texas Probate Code,"
29 because an oil, gas, and mineral lease that was
30 executed under the former law and remains in effect may
31 also be amended under this provision.

32 Revisor's Note
33 (End of Subchapter)

34 Section 847(l), Texas Probate Code, which took
35 effect September 1, 1993, validates certain provisions
36 of mineral leases that were executed and delivered in
37 compliance with Chapter XIII, Texas Probate Code,
38 before that date. The revised law omits that provision
39 because it served its purpose on the day it took effect

1 and, thus, is executed law. Section 311.031(a)(2),
2 Government Code (Code Construction Act), applicable in
3 this context as a result of Section 311.002(3),
4 Government Code, provides that the repeal of a statute
5 does not affect any validation previously made under
6 the statute. The omitted law reads:

7 (1) As to any existing valid mineral
8 lease executed and delivered in compliance
9 with this chapter before September 1, 1993,
10 a provision of the lease continuing the
11 lease in force after its five-year primary
12 term by a shut-in gas well is validated,
13 unless the validity of the provision is an
14 issue in a lawsuit pending in this state on
15 September 1, 1993.

16 [Sections 1160.061-1160.100 reserved for expansion]

17 SUBCHAPTER C. MINERAL LEASES AT PRIVATE SALE

18 Revised Law

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
28 requirements.

29 (b) Leases authorized under this subchapter may include
30 pooling provisions or unitization clauses as in other cases. (Tex.
31 Prob. Code, Sec. 848(a).)

32 Source Law

33 Sec. 848. (a) Notwithstanding the mandatory
34 requirements for setting a time and place for hearing
35 of an application to lease under Section 847 of this
36 code and the issuance, service, and return of notice,
37 the court may authorize the making of oil, gas, and
38 mineral leases at private sale without public notice
39 or advertising if, in the opinion of the court,
40 sufficient facts are set out in the application to show
41 that it would be more advantageous to the estate that a
42 lease be made privately and without compliance with
43 the mandatory requirements under Section 847 of this
44 code. Leases authorized under this section may

1 include pooling provisions or unitization clauses as
2 in other cases.

3 Revised Law

4 Sec. 1160.102. ACTION OF COURT IF PUBLIC ADVERTISING NOT
5 REQUIRED. (a) At any time after the fifth day and before the 11th
6 day after the filing date of an application to lease at a private
7 sale and without an order setting the hearing time and place, the
8 court shall:

9 (1) hear the application;

10 (2) inquire into the manner in which the proposed
11 lease has been or will be made; and

12 (3) hear evidence for or against the application.

13 (b) If the court is satisfied that the lease has been or will
14 be made for a fair and sufficient consideration and on fair terms
15 and has been or will be properly made in conformity with law, the
16 court shall enter an order authorizing the execution of the lease
17 without the necessity of advertising, notice, or citation. The
18 order must comply in all other respects with the requirements
19 essential to the validity of mineral leases set out in Subchapter B
20 as if advertising or notice were required.

21 (c) An order that confirms a lease made at a private sale
22 does not need to be issued. A lease made at a private sale is not
23 valid until any increased or additional bond required by the court
24 has been approved by the court and filed with the court clerk.
25 (Tex. Prob. Code, Sec. 848(b).)

26 Source Law

27 (b) At any time after the expiration of five
28 days and before the expiration of the 10th day after
29 the date of filing and without an order setting the
30 time and place of hearing, the court shall hear the
31 application to lease at a private sale. The court
32 shall inquire into the manner in which the proposed
33 lease has been or will be made and shall hear evidence
34 for or against the application. If the court is
35 satisfied that the lease has been or will be made for a
36 fair and sufficient consideration and on fair terms
37 and has been or will be properly made in conformity
38 with the law, the court shall enter an order
39 authorizing the execution of the lease without the
40 necessity of advertising, notice, or citation. An
41 order entered under this subsection must comply in all
42 other respects with the requirements essential to the
43 validity of mineral leases set out in this chapter as
44 if advertising or notice were required. An order that

1 confirms a lease made at a private sale does not need
2 to be issued. A lease made at a private sale is not
3 valid until the increased or additional bond required
4 by the court, if any, has been approved by the court
5 and filed with the clerk of the court.

6 Revisor's Note

7 Section 848(b), Texas Probate Code, refers to
8 compliance with the requirements essential to the
9 validity of mineral leases "set out in this chapter,"
10 meaning Chapter XIII, Texas Probate Code, as if
11 advertising or notice were required. Although Chapter
12 XIII, Texas Probate Code, is revised in Title 3 of this
13 code, the revised law substitutes a reference to
14 "Subchapter B" rather than substituting a reference to
15 "this title" because all of the referenced
16 requirements are revised in that subchapter.

17 [Sections 1160.103-1160.150 reserved for expansion]

18 SUBCHAPTER D. POOLING OR UNITIZATION OF ROYALTIES OR MINERALS

19 Revised Law

20 Sec. 1160.151. AUTHORIZATION FOR POOLING OR UNITIZATION.

21 (a) If an existing lease on property owned by an estate being
22 administered does not adequately provide for pooling or
23 unitization, the court in which the proceeding is pending may, in
24 the manner provided by this subchapter, authorize the commitment of
25 royalty or mineral interests in oil, liquid hydrocarbons, gas,
26 gaseous elements, and other minerals or any one or more of them
27 owned by the estate to agreements that provide for the operation of
28 areas as a pool or unit for the exploration for, development of, and
29 production of all of those minerals, if the court finds that:

30 (1) the pool or unit to which the agreement relates
31 will be operated in a manner that protects correlative rights or
32 prevents the physical or economic waste of oil, liquid
33 hydrocarbons, gas, gaseous elements, or other minerals subject to
34 the agreement; and

35 (2) it is in the best interests of the estate to
36 execute the agreement.

37 (b) An agreement authorized under Subsection (a) may

1 provide that:

2 (1) operations incident to the drilling of or
3 production from a well on any portion of a pool or unit are
4 considered for all purposes to be the conduct of operations on or
5 production from each separately owned tract in the pool or unit;

6 (2) any lease covering any part of the area committed
7 to a pool or unit continues in effect in its entirety as long as:

8 (A) oil, gas, or other minerals subject to the
9 agreement are produced in paying quantities from any part of the
10 pooled or unitized area;

11 (B) operations are conducted as provided in the
12 lease on any part of the pooled or unitized area; or

13 (C) there is a shut-in gas well on any part of the
14 pooled or unitized area, if the presence of the shut-in gas well is
15 a ground for continuation of the lease under the terms of the lease;

16 (3) the production allocated by the agreement to each
17 tract included in a pool or unit shall, when produced, be considered
18 for all purposes to have been produced from the tract by a well
19 drilled on the tract;

20 (4) the royalties provided for on production from any
21 tract or portion of a tract within the pool or unit shall be paid
22 only on that portion of the production allocated to the tract in
23 accordance with the agreement;

24 (5) the dry gas, before or after extraction of
25 hydrocarbons, may be returned to a formation underlying any land or
26 leases committed to the agreement, and that royalties are not
27 required to be paid on the gas returned; and

28 (6) gas obtained from other sources or another tract
29 of land may be injected into a formation underlying any land or
30 lease committed to the agreement, and that royalties are not
31 required to be paid on the gas injected when the gas is produced
32 from the unit. (Tex. Prob. Code, Secs. 849(a), (b).)

33 Source Law

34 Sec. 849. (a) When an existing lease on
35 property owned by the estate does not adequately

1 provide for pooling or unitization, the court may
2 authorize the commitment of royalty or mineral
3 interests in oil, liquid hydrocarbons, gas (including
4 all liquid hydrocarbons in the gaseous phase in the
5 reservoir), gaseous elements, and other minerals or
6 any one or more of them owned by the estate being
7 administered to agreements that provide for the
8 operation of areas as a pool or unit for the
9 exploration, development, and production of all those
10 minerals, if the court finds that the pool or unit to
11 which the agreement relates will be operated in such a
12 manner as to protect correlative rights, or to prevent
13 the physical or economic waste of oil, liquid
14 hydrocarbons, gas (including all liquid hydrocarbons
15 in the gaseous phase in the reservoir), gaseous
16 elements, or other mineral subject thereto, and that
17 it is in the best interests of the estate to execute
18 the agreement. Any agreement so authorized to be
19 executed may provide that:

20 (1) operations incident to the drilling of
21 or production from a well on any portion of a pool or
22 unit are deemed for all purposes to be the conduct of
23 operations on or production from each separately owned
24 tract in the pool or unit;

25 (2) any lease covering any part of the area
26 committed to a pool or unit shall continue in force in
27 its entirety as long as oil, gas, or other mineral
28 subject to the agreement is produced in paying
29 quantities from any part of the pooled or unitized
30 area, as long as operations are conducted as provided
31 in the lease on any part of the pooled or unitized
32 area, or as long as there is a shut-in gas well on any
33 part of the pooled or unitized area if the presence of
34 the shut-in gas well is a ground for continuation of
35 the lease on the terms of the lease;

36 (3) the production allocated by the
37 agreement to each tract included in a pool or unit
38 shall, when produced, be deemed for all purposes to
39 have been produced from the tract by a well drilled on
40 the tract;

41 (4) the royalties provided for on
42 production from any tract or portion of a tract within
43 the pool or unit shall be paid only on that portion of
44 the production allocated to the tract in accordance
45 with the agreement;

46 (5) the dry gas, before or after
47 extraction of hydrocarbons, may be returned to a
48 formation underlying any lands or leases committed to
49 the agreement, and that no royalties are required to be
50 paid on the gas so returned; and

51 (6) gas obtained from other sources or
52 another tract of land may be injected into a formation
53 underlying any land or lease committed to the
54 agreement, and that no royalties are required to be
55 paid on the gas so injected when same is produced from
56 the unit.

57 (b) Pooling or unitization, when not adequately
58 provided for by an existing lease on property owned by
59 the estate, may be authorized by the court in which the
60 proceeding is pending pursuant to and in conformity
61 with Subsections (c)-(g) of this section.

62 Revised Law

63 Sec. 1160.152. POOLING OR UNITIZATION APPLICATION. (a)

64 The guardian of the estate shall file with the county clerk of the
65 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 Source Law

24 (c) The guardian of the estate shall file with
25 the county clerk of the county in which the
26 guardianship proceeding is pending the guardian's
27 written application for authority to enter into a
28 pooling or unitization agreement supplementing,
29 amending, or otherwise relating to, any existing lease
30 covering property owned by the estate, or to commit
31 royalties or other interest in minerals, whether
32 subject to lease or not, to a pooling or unitization
33 agreement. The application must also describe the
34 property sufficiently as required in the original
35 application to lease, describe briefly the lease to
36 which the interest of the estate is subject, and set
37 out the reasons the proposed agreement concerning the
38 property should be made. A true copy of the proposed
39 agreement shall be attached to the application and by
40 reference made a part of the application, but the
41 agreement may not be recorded in the judge's
42 guardianship docket. The clerk shall immediately,
43 after the application is filed, call it to the
44 attention of the judge.

1 Revisor's Note

2 Section 849(c), Texas Probate Code, refers to a
3 "true copy" of a proposed agreement. The revised law
4 omits "true" for the reason stated in the revisor's
5 note to Section 1160.057.

6 Revised Law

7 Sec. 1160.153. NOTICE NOT REQUIRED. Notice by advertising,
8 citation, or otherwise of the filing of a pooling or unitization
9 application under Section 1160.152 is not required. (Tex. Prob.
10 Code, Sec. 849(d).)

11 Source Law

12 (d) Notice of the filing of the application by
13 advertising, citation, or otherwise is not required.

14 Revised Law

15 Sec. 1160.154. HEARING ON APPLICATION. (a) The judge may
16 hold a hearing on a pooling or unitization application filed under
17 Section 1160.152 at any time agreeable to the parties to the
18 proposed agreement.

19 (b) The judge shall hear evidence and determine to the
20 judge's satisfaction whether it is in the best interests of the
21 estate that the proposed agreement be authorized.

22 (c) The hearing may be continued from day to day and from
23 time to time as the court finds necessary. (Tex. Prob. Code, Sec.
24 849(e).)

25 Source Law

26 (e) The judge may hold a hearing on the
27 application at a time that is agreeable to the parties
28 to the proposed agreement. The judge shall hear proof
29 and be satisfied as to whether it is in the best
30 interests of the estate that the proposed agreement be
31 authorized. The hearing may be continued from day to
32 day and from time to time as the court finds to be
33 necessary.

34 Revised Law

35 Sec. 1160.155. ACTION OF COURT AND CONTENTS OF ORDER. (a)
36 The court shall enter an order setting out the court's findings and
37 authorizing execution of the proposed pooling or unitization
38 agreement, with or without payment of cash consideration according

1 to the agreement, if the court finds that:

2 (1) the pool or unit to which the agreement relates
3 will be operated in a manner that protects correlative rights or
4 prevents the physical or economic waste of oil, liquid
5 hydrocarbons, gas, gaseous elements, or other minerals subject to
6 the pool or unit;

7 (2) it is in the best interests of the estate that the
8 agreement be executed; and

9 (3) the agreement conforms substantially with the
10 permissible provisions of Section 1160.151.

11 (b) If cash consideration is to be paid for the pooling or
12 unitization agreement, the court shall make a finding as to the
13 necessity of increased or additional bond as a finding is made in
14 the making of leases on payment of the cash bonus for the lease. The
15 agreement is not valid until any required increased or additional
16 bond has been approved by the judge and filed with the clerk.

17 (c) If the effective date of the pooling or unitization
18 agreement is not stipulated in the agreement, the effective date of
19 the agreement is the date of the court's order. (Tex. Prob. Code,
20 Sec. 849(f).)

21 Source Law

22 (f) If the court finds that the pool or unit to
23 which the agreement relates will be operated in such a
24 manner as to protect correlative rights or to prevent
25 the physical or economic waste of oil, liquid
26 hydrocarbons, gas (including all liquid hydrocarbons
27 in the gaseous phase in the reservoir), gaseous
28 elements, or other mineral subject to the pool or unit,
29 that it is in the best interests of the estate that the
30 agreement be executed, and that the agreement conforms
31 substantially with the permissible provisions of
32 Subsection (a) of this section, the court shall enter
33 an order setting out the findings made by the court and
34 authorizing execution of the agreement, with or
35 without payment of cash consideration according to the
36 agreement. If cash consideration is to be paid for the
37 agreement, the court shall make a finding as to the
38 necessity of increased or additional bond as a finding
39 is made in the making of leases on payment of the cash
40 bonus for the lease. The agreement is not valid until
41 the increased or additional bond required by the
42 court, if any, has been approved by the judge and filed
43 with the clerk. If the date is not stipulated in the
44 agreement, the date of the court's order shall be the
45 effective date of the agreement.

46 [Sections 1160.156-1160.200 reserved for expansion]

1 SUBCHAPTER E. SPECIAL ANCILLARY INSTRUMENTS THAT MAY BE EXECUTED
2 WITHOUT COURT ORDER

3 Revised Law

4 Sec. 1160.201. AUTHORIZATION FOR EXECUTION OF CERTAIN
5 INSTRUMENTS. As to any mineral lease or pooling or unitization
6 agreement, executed on behalf of an estate before September 1,
7 1993, pursuant to provisions, or executed by a former owner of land,
8 minerals, or royalty affected by the lease or agreement, the
9 guardian of the estate being administered, without further court
10 order and without consideration, may execute:

- 11 (1) division orders;
12 (2) transfer orders;
13 (3) instruments of correction;
14 (4) instruments designating depository banks for the
15 receipt of delay rentals or shut-in gas well royalty to accrue or
16 become payable under the terms of the lease; or
17 (5) similar instruments relating to the lease or
18 agreement and the property covered by the lease or agreement. (Tex.
19 Prob. Code, Sec. 850.)

20 Source Law

21 Sec. 850. As to any valid mineral lease or
22 pooling or unitization agreement, executed on behalf
23 of the estate before September 1, 1993, pursuant to
24 provisions, or by a former owner of land, minerals, or
25 royalty affected by the lease, pooling, or unitization
26 agreement, the guardian of the estate that is being
27 administered, without further order of the court and
28 without consideration, may execute division orders,
29 transfer orders, instruments of correction,
30 instruments designating depository banks for the
31 reception of delay rentals or shut-in gas well royalty
32 to accrue or become payable under the terms of the
33 lease, or similar instruments pertaining to the lease
34 or agreement and the property covered by the lease or
35 agreement.

36 Revisor's Note

37 Section 850, Texas Probate Code, refers to a
38 "valid mineral lease or pooling or unitization
39 agreement." The revised law omits "valid" as
40 unnecessary because the word does not add to the clear
41 meaning of the law. For example, a document purporting

1 to be a mineral lease or pooling or unitization
2 agreement is no longer a mineral lease or pooling or
3 unitization agreement if it is expired and is not a
4 mineral lease or pooling or unitization agreement if
5 it is a forgery.

6 [Sections 1160.202-1160.250 reserved for expansion]

7 SUBCHAPTER F. PROCEDURE IF GUARDIAN OF ESTATE NEGLECTS TO APPLY FOR
8 AUTHORITY

9 Revised Law

10 Sec. 1160.251. APPLICATION TO SHOW CAUSE. If a guardian of
11 an estate neglects to apply for authority to subject estate
12 property to a lease for mineral development, pooling, or
13 unitization, or authority to commit royalty or another interest in
14 minerals to pooling or unitization, any person interested in the
15 estate may, on written application filed with the county clerk,
16 have the guardian cited to show cause why it is not in the best
17 interests of the estate to make the lease or enter into an
18 agreement. (Tex. Prob. Code, Sec. 851 (part).)

19 Source Law

20 Sec. 851. When the guardian of an estate
21 neglects to apply for authority to subject property of
22 the estate to a lease for mineral development,
23 pooling, or unitization, or authority to commit
24 royalty or other interest in minerals to pooling or
25 unitization, any person interested in the estate, on
26 written application filed with the county clerk, may
27 cause the guardian to be cited to show cause why it is
28 not in the best interests of the estate for the lease
29 to be made or an agreement to be entered into. . . .

30 Revised Law

31 Sec. 1160.252. HEARING ON APPLICATION. (a) The county
32 clerk shall immediately call the filing of an application under
33 Section 1160.251 to the attention of the judge of the court in which
34 the guardianship proceeding is pending.

35 (b) The judge shall set a time and place for a hearing on the
36 application, and the guardian of the estate shall be cited to appear
37 and show cause why the execution of a lease or agreement described
38 by Section 1160.251 should not be ordered. (Tex. Prob. Code, Sec.
39 851 (part).)

1 Source Law

2 Sec. 851. . . . The clerk shall immediately
3 call the filing of the application under this section
4 to the attention of the judge of the court in which the
5 guardianship proceeding is pending. The judge shall
6 set a time and place for a hearing on the application.
7 The guardian of the estate shall be cited to appear and
8 show cause why the execution of the lease or agreement
9 should not be ordered. . . .

10 Revised Law

11 Sec. 1160.253. ORDER. On a hearing conducted under Section
12 1160.252 and if satisfied from the evidence that it would be in the
13 best interests of the estate, the court shall enter an order
14 requiring the guardian of the estate to file an application to
15 subject the estate property to a lease for mineral development,
16 with or without pooling or unitization provisions, or to commit
17 royalty or other minerals to pooling or unitization, as
18 appropriate. (Tex. Prob. Code, Sec. 851 (part).)

19 Source Law

20 Sec. 851. . . . On hearing and if satisfied
21 from the proof that it would be in the best interests
22 of the estate, the court shall enter an order requiring
23 the guardian to file the guardian's application to
24 subject the property of the estate to a lease for
25 mineral development, with or without pooling or
26 unitization provisions, or to commit royalty or other
27 minerals to unitization, as the case may be. . . .

28 Revisor's Note

29 Section 851, Texas Probate Code, refers to a
30 guardian's application to commit royalty or other
31 minerals to "unitization." The revised law
32 substitutes a reference to an application to commit
33 royalty or other minerals to "pooling or unitization"
34 for the reference to "unitization" for consistency
35 with the other provisions of this chapter. See, for
36 example, Sections 1160.251 and 1160.254 of this
37 chapter, which refer to "pooling or unitization."

38 Revised Law

39 Sec. 1160.254. PROCEDURE TO BE FOLLOWED AFTER ENTRY OF
40 ORDER. After entry of an order under Section 1160.253, the
41 procedures prescribed with respect to an original lease

1 application, or with respect to an original application for
2 authority to commit royalty or minerals to pooling or unitization,
3 shall be followed. (Tex. Prob. Code, Sec. 851 (part).)

4 Source Law

5 Sec. 851. . . . The procedures prescribed with
6 respect to original application to lease or with
7 respect to original application for authority to
8 commit royalty or minerals to pooling or unitization
9 shall be followed.

10 Revisor's Note
11 (End of Chapter)

12 Section 852, Texas Probate Code, validates
13 certain leases of oil, gas, or other minerals existing
14 on September 1, 1993, belonging to the estates of
15 minors or other incapacitated persons and agreements
16 relating to pooling or unitization of oil, gas, or
17 other minerals of those estates. The revised law omits
18 that provision for the reason stated in the revisor's
19 note at the end of Subchapter B. The omitted law
20 reads:

21 Sec. 852. All leases on the oil, gas,
22 or other minerals existing on September 1,
23 1993, belonging to the estates of minors or
24 other incapacitated persons and all
25 agreements with respect to the pooling or
26 unitization of oil, gas, or other minerals
27 or any interest in oil, gas, or other
28 minerals with like properties of others
29 that have been authorized by the court
30 having venue, executed, and delivered by a
31 guardian or other fiduciary of the estate of
32 a minor or incapacitated person in
33 substantial conformity to the rules set
34 forth in statutes on execution or delivery
35 providing for only seven days' notice in
36 some instances and for a brief order
37 designating a time and place for hearing,
38 are validated insofar as the period of
39 notice or absence of an order setting a time
40 and place for hearing is concerned, unless
41 the length of time of the notice or the
42 absence of the order is an issue in a lease
43 or pooling or unitization agreement that is
44 involved in a lawsuit pending on September
45 1, 1993.

46 CHAPTER 1161. INVESTMENTS AND LOANS OF ESTATES OF WARDS

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13 CHAPTER 1161. INVESTMENTS AND LOANS OF ESTATES OF WARDS

14 SUBCHAPTER A. GENERAL PROVISIONS

15 Revised Law

16 Sec. 1161.001. GUARDIAN'S DUTY TO KEEP ESTATE INVESTED.

17 (a) The guardian of the estate shall invest any funds and assets of

18 a ward's estate available for investment except:

19 (1) if the court orders otherwise under this chapter;

20 or

21 (2) as provided by Subsection (b).

22 (b) The guardian of the estate is not required to invest

23 funds that are immediately necessary for the education, support,

24 and maintenance of the ward or any others the ward supports as

25 provided by this title. (Tex. Prob. Code, Sec. 854(a).)

26 Source Law

27 Sec. 854. (a) The guardian of the estate is not

28 required to invest funds that are immediately

29 necessary for the education, support, and maintenance

30 of the ward or others the ward supports, if any, as

31 provided by this chapter. The guardian of the estate

32 shall invest any other funds and assets available for

33 investment unless the court orders otherwise under

34 this subpart.

35 Revisor's Note

36 Section 854(a), Texas Probate Code, requires a

37 guardian of the estate to invest "any other funds and

38 assets available for investment." It is clear from the

1 context of Subpart L, Part 4, Chapter XIII, Texas
2 Probate Code, revised as this chapter and of which
3 Section 854 is a part, that the "funds and assets"
4 belong to the ward's estate. The revised law is
5 drafted accordingly.

6 Revised Law

7 Sec. 1161.002. STANDARD FOR MANAGEMENT AND INVESTMENT OF
8 ESTATE. (a) In acquiring, investing, reinvesting, exchanging,
9 retaining, selling, supervising, and managing a ward's estate, a
10 guardian of the estate shall exercise the judgment and care under
11 the circumstances then prevailing that a person of ordinary
12 prudence, discretion, and intelligence exercises in the management
13 of the person's own affairs, considering the probable income from,
14 probable increase in value of, and safety of the person's capital.
15 The guardian shall also consider all other relevant factors,
16 including:

- 17 (1) the anticipated costs of supporting the ward;
18 (2) the ward's age, education, current income, ability
19 to earn additional income, net worth, and liabilities;
20 (3) the nature of the ward's estate; and
21 (4) any other resources reasonably available to the
22 ward.

23 (b) In determining whether a guardian of the estate has
24 exercised the standard of investment required by this section with
25 respect to an investment decision, the court shall, absent fraud or
26 gross negligence, consider the investment of all the estate assets
27 over which the guardian has management or control, rather than
28 considering the prudence of only a single investment made by the
29 guardian. (Tex. Prob. Code, Secs. 855(a), (a-1).)

30 Source Law

31 Sec. 855. (a) In acquiring, investing,
32 reinvesting, exchanging, retaining, selling,
33 supervising, and managing a ward's estate, a guardian
34 of the estate shall exercise the judgment and care
35 under the circumstances then prevailing that persons
36 of ordinary prudence, discretion, and intelligence
37 exercise in the management of their own affairs,
38 considering the probable income from as well as the

1 probable increase in value and the safety of their
2 capital. The guardian shall also consider all other
3 relevant factors, including:

4 (1) the anticipated costs of supporting
5 the ward;

6 (2) the ward's age, education, current
7 income, ability to earn additional income, net worth,
8 and liabilities;

9 (3) the nature of the ward's estate; and

10 (4) any other resources reasonably
11 available to the ward.

12 (a-1) In determining whether a guardian has
13 exercised the standard of investment required by this
14 section with respect to an investment decision, the
15 court shall, absent fraud or gross negligence, take
16 into consideration the investment of all the assets of
17 the estate over which the guardian has management or
18 control, rather than taking into consideration the
19 prudence of only a single investment made by the
20 guardian.

21 Revisor's Note

22 Section 855(a-1), Texas Probate Code, refers to
23 "the standard of investment required by this section."

24 The reference to "this section" means Section 855,
25 Texas Probate Code. The relevant portion of Section
26 855 providing for the standard required of a guardian
27 is contained in Section 855(a), Texas Probate Code,
28 revised as Subsection (a) of this section. For this
29 reason, the revised law retains the reference to "this
30 section."

31 Revised Law

32 Sec. 1161.003. INVESTMENTS THAT MEET STANDARD FOR
33 INVESTMENT. A guardian of the estate is considered to have
34 exercised the standard required by Section 1161.002(a) with respect
35 to investing the ward's estate if the guardian invests in the
36 following:

37 (1) bonds or other obligations of the United States;

38 (2) tax-supported bonds of this state;

39 (3) except as limited by Sections 1161.004(b) and (c),
40 tax-supported bonds of a county, district, political subdivision,
41 or municipality in this state;

42 (4) if the payment of the shares or share accounts is
43 insured by the Federal Deposit Insurance Corporation, shares or
44 share accounts of:

1 (A) a state savings and loan association or
2 savings bank that has its main office or a branch office in this
3 state; or

4 (B) a federal savings and loan association or
5 savings bank that has its main office or a branch office in this
6 state;

7 (5) collateral bonds that:

8 (A) are issued by a company incorporated under
9 the laws of this state that has a paid-in capital of \$1 million or
10 more;

11 (B) are a direct obligation of the company; and

12 (C) are specifically secured by first mortgage
13 real estate notes or other securities pledged with a trustee; or

14 (6) interest-bearing time deposits that may be
15 withdrawn on or before one year after demand in a bank that does
16 business in this state, if the payment of the time deposits is
17 insured by the Federal Deposit Insurance Corporation. (Tex. Prob.
18 Code, Sec. 855(b).)

19 Source Law

20 (b) A guardian of the estate is considered to
21 have exercised the standard required by this section
22 with respect to investing the ward's estate if the
23 guardian invests in the following:

24 (1) bonds or other obligations of the
25 United States;

26 (2) tax-supported bonds of this state;

27 (3) except as limited by Subsections (c)
28 and (d) of this section, tax-supported bonds of a
29 county, district, political subdivision, or
30 incorporated city or town in this state;

31 (4) shares or share accounts of a state
32 savings and loan association or savings bank with its
33 main office or a branch office in this state if the
34 payment of the shares or share accounts is insured by
35 the Federal Deposit Insurance Corporation;

36 (5) the shares or share accounts of a
37 federal savings and loan association or savings bank
38 with its main office or a branch office in this state
39 if the payment of the shares or share accounts is
40 insured by the Federal Deposit Insurance Corporation;

41 (6) collateral bonds of companies
42 incorporated under the laws of this state, having a
43 paid-in capital of \$1,000,000 or more, when the bonds
44 are a direct obligation of the company that issues the
45 bonds and are specifically secured by first mortgage
46 real estate notes or other securities pledged with a
47 trustee; or

48 (7) interest-bearing time deposits that
49 may be withdrawn on or before one year after demand in

1 a bank that does business in this state where the
2 payment of the time deposits is insured by the Federal
3 Deposit Insurance Corporation.

4 Revisor's Note

5 (1) Section 855(b), Texas Probate Code, refers
6 to "the standard required by this section." The
7 reference to "this section" means Section 855, Texas
8 Probate Code. The relevant portion of Section 855
9 providing for the standard required of a guardian is
10 contained in Section 855(a), Texas Probate Code,
11 revised as Section 1161.002(a). For this reason, the
12 revised law refers to "Section 1161.002(a)" in this
13 context.

14 (2) Section 855(b)(3), Texas Probate Code,
15 refers to a "city" or "town." Throughout this
16 subchapter, the revised law substitutes the term
17 "municipality" for "city," "incorporated town," or
18 "town" because "municipality" is the term used in the
19 Local Government Code to refer to those entities.

20 Revised Law

21 Sec. 1161.004. RESTRICTIONS ON INVESTMENT IN CERTAIN BONDS.

22 (a) In this section, "net funded debt" means the total funded debt
23 less sinking funds on hand.

24 (b) A guardian of the estate may purchase the bonds of a
25 county, district, or political subdivision other than a
26 municipality only if the net funded debt of the county, district, or
27 political subdivision that issues the bonds does not exceed 10
28 percent of the assessed value of taxable property in the county,
29 district, or political subdivision.

30 (c) A guardian of the estate may purchase the bonds of a
31 municipality only if the net funded debt of the municipality does
32 not exceed 10 percent of the assessed value of taxable property in
33 the municipality less that part of the debt incurred for
34 acquisition or improvement of revenue-producing utilities, the
35 revenue of which is not pledged to support other obligations of the
36 municipality.

1 (d) Subsections (b) and (c) do not apply to bonds issued for
2 road purposes in this state under Section 52, Article III, Texas
3 Constitution, that are supported by a tax unlimited as to rate or
4 amount. (Tex. Prob. Code, Secs. 855(c), (d), (e), (f).)

5 Source Law

6 [(b) A guardian of the estate is considered to
7 have exercised the standard required by this section
8 with respect to investing the ward's estate if the
9 guardian invests in the following:]

10 (c) The bonds of a county, district, or
11 subdivision may be purchased only if the net funded
12 debt of the county, district, or subdivision that
13 issues the bonds does not exceed 10 percent of the
14 assessed value of taxable property in the county,
15 district, or subdivision.

16 (d) The bonds of a city or town may be purchased
17 only if the net funded debt of the city or town does not
18 exceed 10 percent of the assessed value of taxable
19 property in the city or town less that part of the debt
20 incurred for acquisition or improvement of
21 revenue-producing utilities, the revenues of which are
22 not pledged to support other obligations of the city or
23 town.

24 (e) The limitations in Subsections (c) and (d)
25 of this section do not apply to bonds issued for road
26 purposes in this state under Section 52, Article III,
27 of the Texas Constitution that are supported by a tax
28 unlimited as to rate or amount.

29 (f) In this section, "net funded debt" means the
30 total funded debt less sinking funds on hand.

31 Revisor's Note

32 Section 855(c), Texas Probate Code, provides
33 limits for the "bonds of a county, district, or
34 subdivision." Section 855(d), Texas Probate Code,
35 revised as Section 1161.004(c), provides different
36 limits for the purchase of "bonds of a city or town."
37 Section 1161.004(b) of the revised law specifies that
38 the limits provided by Section 855(c), Texas Probate
39 Code, apply to a "county, district, or political
40 subdivision other than a municipality," because it is
41 clear from the source law that limits on the purchase
42 of municipal bonds are controlled by Section
43 1161.004(c) of the revised law and because it is clear
44 from the context that the referenced "subdivision" is
45 a political subdivision.

1 Revised Law

2 Sec. 1161.005. MODIFICATION OR ELIMINATION OF DUTY OR
3 STANDARD. On a showing by clear and convincing evidence that the
4 action is in the best interests of the ward and the ward's estate,
5 the court may modify or eliminate:

6 (1) the duty of the guardian of the estate to keep the
7 estate invested; or

8 (2) the standard required by Section 1161.002(a) with
9 regard to investments of estate assets. (Tex. Prob. Code, Sec.
10 855(g).)

11 Source Law

12 (g) The court may modify or eliminate the
13 guardian's duty to keep the estate invested or the
14 standard required by this section with regard to
15 investments of estate assets on a showing by clear and
16 convincing evidence that the modification or
17 elimination is in the best interests of the ward and
18 the ward's estate.

19 Revisor's Note

20 Section 855(g), Texas Probate Code, refers to
21 "the standard required by this section with regard to
22 investments of estate assets." The reference to "this
23 section" means Section 855, Texas Probate Code. The
24 relevant portion of Section 855 referring to the
25 standard required for investment is contained in
26 Section 855(a), Texas Probate Code, revised as Section
27 1161.002(a). For this reason, the revised law
28 substitutes a reference to "Section 1161.002(a)" for
29 the reference to "this section."

30 Revised Law

31 Sec. 1161.006. RETENTION OF CERTAIN ASSETS. (a) Without
32 court approval a guardian of the estate may retain until the first
33 anniversary of the date of receipt any property received into the
34 guardianship estate at the estate's inception or added to the
35 estate by gift, devise, inheritance, mutation, or increase, without
36 regard to diversification of investments and without liability for
37 any depreciation or loss resulting from the retention.

1 (b) The guardian shall care for and manage the retained
2 assets as a person of ordinary prudence, discretion, and
3 intelligence would in caring for and managing the person's own
4 affairs.

5 (c) On application and a hearing, the court may issue an
6 order authorizing the guardian to continue retaining the property
7 after the period prescribed by Subsection (a) if the retention is an
8 element of the guardian's investment plan as provided by Subchapter
9 B. (Tex. Prob. Code, Sec. 855A.)

10 Source Law

11 Sec. 855A. (a) A guardian of the estate may
12 retain without court approval until the first
13 anniversary of the date of receipt any property
14 received into the guardianship estate at its inception
15 or added to the estate by gift, devise, inheritance,
16 mutation, or increase, without regard to
17 diversification of investments and without liability
18 for any depreciation or loss resulting from the
19 retention. The guardian shall care for and manage the
20 retained assets as a person of ordinary prudence,
21 discretion, and intelligence would in caring for and
22 managing the person's own affairs.

23 (b) On application and a hearing, the court may
24 render an order authorizing the guardian to continue
25 retaining the property after the period prescribed by
26 Subsection (a) of this section if the retention is an
27 element of the guardian's investment plan as provided
28 by this subpart.

29 Revisor's Note

30 Section 855A(b), Texas Probate Code, refers to
31 "the guardian's investment plan as provided by this
32 subpart." The reference to "this subpart" means
33 Subpart L, Part 4, Chapter XIII, Texas Probate Code.
34 The relevant portion of Subpart L providing for the
35 guardian's investment plan is contained in Section
36 855B, Texas Probate Code, revised as Subchapter B of
37 this chapter. For this reason, the revised law
38 substitutes a reference to "Subchapter B" for the
39 reference to "this subpart."

40 Revised Law

41 Sec. 1161.007. HEARING TO PROTECT ESTATE. (a) The court
42 may, on the court's own motion or on written request of a person
43 interested in the guardianship, cite the guardian of the estate to

1 appear and show cause why the estate is not invested or not properly
2 invested.

3 (b) Except as provided by Subsection (d), at any time after
4 giving notice to all parties, the court may conduct a hearing to
5 protect the estate.

6 (c) On the hearing of the court's motion or a request made
7 under this section, the court shall issue an order the court
8 considers to be in the ward's best interests.

9 (d) The court may not hold a final hearing on whether the
10 estate is properly invested until the 31st day after the date the
11 guardian is originally cited to appear under Subsection (a).

12 (e) The court may appoint a guardian ad litem for the
13 limited purpose of representing the ward's best interests with
14 respect to the investment of the ward's property at a hearing under
15 this section. (Tex. Prob. Code, Secs. 854(b), (c).)

16 Source Law

17 (b) The court may, on its own motion or on
18 written request of a person interested in the
19 guardianship, cite the guardian to appear and show
20 cause why the estate is not invested or not properly
21 invested. At any time after giving notice to all
22 parties, the court may conduct a hearing to protect the
23 estate, except that the court may not hold a final
24 hearing on whether the estate is properly invested
25 until the 31st day after the date the guardian was
26 originally cited to appear under this subsection. On
27 the hearing of the court's motion or a request made
28 under this section, the court shall render an order the
29 court considers to be in the best interests of the
30 ward.

31 (c) The court may appoint a guardian ad litem
32 for the limited purpose of representing the ward's best
33 interests with respect to the investment of the ward's
34 property at a hearing under this section.

35 Revisor's Note

36 (1) Section 854(b), Texas Probate Code,
37 provides that "the court may not hold a final hearing
38 on whether the estate is properly invested until the
39 31st day after the date the guardian was originally
40 cited to appear under this subsection." The reference
41 to "this subsection" means Section 854(b), Texas
42 Probate Code, which is revised as Sections
43 1161.007(a)-(d). The revised law substitutes a

1 reference to "Subsection (a)" for the reference to
2 "this subsection" because the relevant portion of
3 Section 854(b), Texas Probate Code, relating to the
4 court's authority to cite a guardian to appear is
5 revised as Subsection (a).

6 (2) Sections 854(b) and (c), Texas Probate Code,
7 refer to a request for a hearing and a hearing "under
8 this section." The reference to "this section" means
9 Section 854, Texas Probate Code. The relevant
10 portions of Section 854 providing for the authority to
11 request a hearing and the institution of a hearing are
12 contained in Section 854(b), Texas Probate Code,
13 revised as this section. For this reason, the revised
14 law refers to "this section" in this context.

15 Revised Law

16 Sec. 1161.008. LIABILITY OF GUARDIAN AND GUARDIAN'S SURETY.

17 (a) In addition to any other remedy authorized by law, if the
18 guardian of the estate fails to invest or lend estate assets in the
19 manner provided by this chapter, the guardian and the guardian's
20 surety are liable for the principal and the greater of:

21 (1) the highest legal rate of interest on the
22 principal during the period the guardian failed to invest or lend
23 the assets; or

24 (2) the overall return that would have been made on the
25 principal if the principal were invested in the manner provided by
26 this chapter.

27 (b) In addition to the liability under Subsection (a), the
28 guardian and the guardian's surety are liable for attorney's fees,
29 litigation expenses, and costs related to a proceeding brought to
30 enforce this section. (Tex. Prob. Code, Sec. 863.)

31 Source Law

32 Sec. 863. (a) In addition to any other remedy
33 authorized by law, if the guardian of the estate fails
34 to invest or lend estate assets in the manner provided
35 by this subpart, the guardian and the guardian's surety
36 are liable for the principal and the greater of:

37 (1) the highest legal rate of interest on

1 the principal during the period the guardian failed to
2 invest or lend the assets; or

3 (2) the overall return that would have
4 been made on the principal if the principal were
5 invested in the manner provided by this subpart.

6 (b) In addition to the liability under
7 Subsection (a) of this section, the guardian and the
8 guardian's surety are liable for attorney's fees,
9 litigation expenses, and costs related to a proceeding
10 brought to enforce this section.

11 [Sections 1161.009-1161.050 reserved for expansion]

12 SUBCHAPTER B. PROCEDURE FOR MAKING INVESTMENTS OR LOANS OR
13 RETAINING ESTATE ASSETS

14 Revised Law

15 Sec. 1161.051. PROCEDURE IN GENERAL. (a) Not later than
16 the 180th day after the date the guardian of the estate qualifies as
17 guardian or another date specified by the court, the guardian
18 shall:

19 (1) invest estate assets according to Section
20 1161.003; or

21 (2) file a written application with the court for an
22 order:

23 (A) authorizing the guardian to:

24 (i) develop and implement an investment
25 plan for estate assets;

26 (ii) invest in or sell securities under an
27 investment plan developed under Subparagraph (i);

28 (iii) declare that one or more estate
29 assets must be retained, despite being underproductive with respect
30 to income or overall return; or

31 (iv) loan estate funds, invest in real
32 estate or make other investments, or purchase a life, term, or
33 endowment insurance policy or an annuity contract; or

34 (B) modifying or eliminating the guardian's duty
35 to invest the estate.

36 (b) The court may approve an investment plan under
37 Subsection (a)(2) without a hearing. (Tex. Prob. Code, Secs.
38 855B(a), (a-1).)

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1 (c) A citation or notice is not necessary to invest in or
2 sell securities under an investment plan authorized by the court
3 under this section. (Tex. Prob. Code, Secs. 855B(b), (e).)

4 Source Law

5 (b) If the court determines that the action
6 requested in the application is in the best interests
7 of the ward and the ward's estate, the court shall
8 render an order granting the authority requested in
9 the application or an order modifying or eliminating
10 the guardian's duty to keep the estate invested. An
11 order under this subsection must state in reasonably
12 specific terms:

13 (1) the nature of the investment,
14 investment plan, or other action requested in the
15 application and authorized by the court, including, if
16 applicable, the authority to invest in and sell
17 securities in accordance with the objectives of the
18 investment plan;

19 (2) when an investment must be reviewed
20 and reconsidered by the guardian; and

21 (3) whether the guardian must report the
22 guardian's review and recommendations to the court.

23 (e) A citation or notice is not necessary to
24 invest in or sell securities under an investment plan
25 authorized by the court under Subsection (b)(1) of
26 this section.

27 Revisor's Note

28 Section 855B(e), Texas Probate Code, refers to
29 "an investment plan authorized by the court under
30 Subsection (b)(1)," meaning Section 855B(b)(1), Texas
31 Probate Code. Section 855B(b), Texas Probate Code,
32 revised in this section, generally provides for court
33 authorization of investment plans in this context.
34 Therefore, the revised law substitutes a reference to
35 "this section" for the reference to "Subsection
36 (b)(1)" because the broader reference is more helpful
37 to the reader.

38 Revised Law

39 Sec. 1161.053. APPLICABILITY OF PROCEDURE TO CERTAIN
40 ASSETS. The fact that an account or other asset is the subject of a
41 specific or general gift under a ward's will, if any, or that a ward
42 has funds, securities, or other property held with a right of
43 survivorship does not prevent:

44 (1) the guardian of the estate from taking possession

1 and control of the asset or closing the account; or

2 (2) the court from authorizing an action or modifying
3 or eliminating a duty with respect to the possession, control, or
4 investment of the account or other asset. (Tex. Prob. Code, Sec.
5 855B(c).)

6 Source Law

7 (c) The fact that an account or other asset is
8 the subject of a specific or general gift under a
9 ward's will, if any, or that a ward has funds,
10 securities, or other property held with a right of
11 survivorship does not prevent:

12 (1) a guardian of the estate from taking
13 possession and control of the asset or closing the
14 account; or

15 (2) the court from authorizing an action
16 or modifying or eliminating a duty with respect to the
17 possession, control, or investment of the account or
18 other asset.

19 Revised Law

20 Sec. 1161.054. INAPPLICABILITY OF PROCEDURE TO CERTAIN
21 ASSETS. (a) The procedure prescribed by this subchapter does not
22 apply if a different procedure is prescribed for an investment or
23 sale by a guardian.

24 (b) A guardian of the estate is not required to follow the
25 procedure prescribed by this subchapter with respect to an
26 investment or sale that is specifically authorized by other law.
27 (Tex. Prob. Code, Sec. 855B(d).)

28 Source Law

29 [(a) Not later than the 180th day after the date
30 on which the guardian of the estate [qualified as
31 guardian or another date specified by the court, the
32 guardian shall:]

33 (d) The procedure prescribed by this section
34 does not apply if a different procedure is prescribed
35 for an investment or sale by a guardian. A guardian is
36 not required to follow the procedure prescribed by
37 this section with respect to an investment or sale that
38 is specifically authorized by other law.

39 [Sections 1161.055-1161.100 reserved for expansion]

40 SUBCHAPTER C. INVESTMENTS IN CERTAIN INSURANCE OR ANNUITIES

41 Revised Law

42 Sec. 1161.101. DEFINITION. In this subchapter, "authorized
43 life insurance company" means a stock or mutual legal reserve life
44 insurance company that:

1 (1) is licensed by the Texas Department of Insurance
2 to transact the business of life insurance in this state; and

3 (2) maintains the legal reserve required by the laws
4 of this state. (Tex. Prob. Code, Sec. 857(a).)

5 Source Law

6 Sec. 857. (a) In this section, "life insurance
7 company" means a stock or mutual legal reserve life
8 insurance company that maintains the full legal
9 reserves required under the laws of this state and that
10 is licensed by the State Board of Insurance to transact
11 the business of life insurance in this state.

12 Revisor's Note

13 (1) Section 857(a), Texas Probate Code, defines
14 "life insurance company." For clarity and
15 convenience, the revised law substitutes "authorized
16 life insurance company" for "life insurance company"
17 because it is clear from the substance of the
18 definition that the term applies only to certain life
19 insurance companies that are licensed and that
20 maintain certain reserves.

21 (2) Section 857(a), Texas Probate Code, enacted
22 in 1993, refers to the "State Board of Insurance."
23 Chapter 685, Acts of the 73rd Legislature, Regular
24 Session, 1993, abolished the State Board of Insurance
25 and transferred its functions to the commissioner of
26 insurance and the Texas Department of Insurance.
27 Throughout this subchapter, references to the board
28 have been changed appropriately.

29 Revised Law

30 Sec. 1161.102. AUTHORITY TO INVEST IN CERTAIN INSURANCE OR
31 ANNUITIES. Subject to this subchapter, the guardian of the estate
32 may invest in life, term, or endowment insurance policies, in
33 annuity contracts, or in both, issued by an authorized life
34 insurance company or administered by the Department of Veterans
35 Affairs. (Tex. Prob. Code, Sec. 857(b).)

36 Source Law

37 (b) The guardian of the estate may invest in

1 life, term, or endowment insurance policies, or in
2 annuity contracts, or both, issued by a life insurance
3 company or administered by the Veterans
4 Administration, subject to conditions and limitations
5 in this section.

6 Revisor's Note

7 Section 857(b), Texas Probate Code, refers to the
8 "Veterans Administration." The name of the Veterans
9 Administration has been changed to the Department of
10 Veterans Affairs. Throughout this subchapter,
11 references to the administration have been changed
12 accordingly.

13 Revised Law

14 Sec. 1161.103. INVESTMENT REQUIREMENTS. (a) An insurance
15 policy in which the guardian of the estate invests must be issued on
16 the life of:

17 (1) the ward;

18 (2) the ward's parent, spouse, child, sibling, or
19 grandparent; or

20 (3) another person in whose life the ward may have an
21 insurable interest.

22 (b) The ward must be the annuitant in the annuity contract
23 in which the guardian of the estate invests.

24 (c) Only the ward, the ward's estate, or the ward's parent,
25 spouse, child, sibling, or grandparent may be a beneficiary of the
26 insurance policy or of the death benefit of the annuity contract.

27 (d) The insurance policy or annuity contract may not be
28 amended or changed during the ward's life and disability, except on
29 application to and order of the court. (Tex. Prob. Code, Secs.
30 857(d), (e), (g).)

31 Source Law

32 [(b) The guardian of the estate may invest in
33 life, term, or endowment insurance policies, or in
34 annuity contracts, or both, issued by a life insurance
35 company or administered by the Veterans
36 Administration, subject to conditions and limitations
37 in this section.]

38 (d) An insurance policy must be issued on the
39 life of the ward, or the father, mother, spouse, child,
40 brother, sister, grandfather, or grandmother of the
41 ward or a person in whose life the ward may have an

1 insurable interest.

2 (e) Only the ward, the ward's estate, or the
3 father, mother, spouse, child, brother, sister,
4 grandfather, or grandmother of the ward may be a
5 beneficiary of the insurance policy and of the death
6 benefit of the annuity contract, and the ward must be
7 the annuitant in the annuity contract.

8 (g) The policy or annuity contract may not be
9 amended or changed during the life and disability of
10 the ward except on application to and order of the
11 court.

12 Revised Law

13 Sec. 1161.104. PROCEDURE FOR INVESTING IN INSURANCE OR
14 ANNUITIES. (a) Before the guardian of the estate may invest in
15 life, term, or endowment insurance policies, in annuity contracts,
16 or in both, the guardian must first apply to the court for an order
17 that authorizes the investment.

18 (b) The application must include a report that shows:

19 (1) in detail the estate's financial condition on the
20 date the application is filed;

21 (2) the name and address of the authorized life
22 insurance company from which the insurance policy or annuity
23 contract is to be purchased and that:

24 (A) the company is licensed by the Texas
25 Department of Insurance to transact that business in this state on
26 the date the application is filed; or

27 (B) the policy or contract is administered by the
28 Department of Veterans Affairs;

29 (3) a statement of:

30 (A) the face amount and plan of the insurance
31 policy sought to be purchased; and

32 (B) the amount, frequency, and duration of the
33 annuity payments to be provided by the annuity contract sought to be
34 purchased;

35 (4) a statement of the amount, frequency, and duration
36 of the premiums required by the insurance policy or annuity
37 contract; and

38 (5) a statement of the cash value of the insurance
39 policy or annuity contract at the policy's or contract's

1 anniversary nearest the ward's 21st birthday, assuming that all
2 premiums to the anniversary are paid and that there is no
3 indebtedness against the policy or contract incurred in accordance
4 with its terms.

5 (c) If satisfied by the application and the evidence
6 presented at the hearing that it is in the ward's interests to grant
7 the application, the court shall enter an order granting the
8 application. (Tex. Prob. Code, Secs. 857(c), (i).)

9 Source Law

10 (c) The guardian shall first apply to the court
11 for an order that authorizes the guardian to make the
12 investment. The application filed under this
13 subsection must include a report that shows:

14 (1) in detail the financial condition of
15 the estate at the time the application is made;

16 (2) the name and address of the life
17 insurance company from which the policy or annuity
18 contract is to be purchased and that the company is
19 licensed by the State Board of Insurance to transact
20 that business in this state on the date the application
21 is filed, or that the policy or contract is
22 administered by the Veterans Administration;

23 (3) a statement of the face amount and plan
24 of the policy of insurance sought to be purchased and
25 of the amount, frequency, and duration of the annuity
26 payments to be provided by the annuity contract sought
27 to be purchased;

28 (4) a statement of the amount, frequency,
29 and duration of the premiums required by the policy or
30 annuity contract; and

31 (5) a statement of the cash value of the
32 policy or annuity contract at its anniversary nearest
33 the 21st birthday of the ward, assuming that all
34 premiums to the anniversary are paid and that there is
35 no indebtedness against the policy or contract
36 incurred in accordance with its terms.

37 (i) The court, if satisfied by the application
38 and the evidence adduced at the hearing that it is in
39 the interests of the ward to grant the application,
40 shall enter an order granting the application.

41 Revisor's Note

42 Section 857(c), Texas Probate Code, requires a
43 guardian of the estate to file a report that shows "in
44 detail the financial condition of the estate at the
45 time the application is made" before the guardian of
46 the estate may invest in certain insurance policies or
47 annuity contracts. Throughout this subchapter, the
48 revised law substitutes "date" for "time" because the
49 financial condition of the estate at the precise time

1 of day of the filing is inconsequential; rather, it is
2 the financial condition on the date the application is
3 filed that is of consequence.

4 Revised Law

5 Sec. 1161.105. CONTINUATION OF PREEXISTING POLICIES OR
6 ANNUITIES. (a) A life, term, or endowment insurance policy or an
7 annuity contract owned by the ward when a proceeding for the
8 appointment of a guardian of the estate is commenced may be
9 continued in full effect if it is shown that:

10 (1) the company issuing the policy or contract is an
11 authorized life insurance company; or

12 (2) the policy or contract is administered by the
13 Department of Veterans Affairs.

14 (b) All future premiums for an insurance policy or annuity
15 contract described by Subsection (a) may be paid out of surplus
16 funds of the ward's estate.

17 (c) The guardian of the estate must apply to the court for an
18 order to:

19 (1) continue the policy, the contract, or both
20 according to the existing terms of the policy or contract; or

21 (2) modify the policy or contract to fit any new
22 developments affecting the ward's welfare.

23 (d) Before the court grants an application filed under
24 Subsection (c), the guardian must file a report in the court that
25 shows in detail the financial condition of the ward's estate on the
26 date the application is filed. (Tex. Prob. Code, Sec. 857(h).)

27 Source Law

28 [(b) The guardian of the estate may invest in
29 life, term, or endowment insurance policies, or in
30 annuity contracts, or both, issued by a life insurance
31 company or administered by the Veterans
32 Administration, subject to conditions and limitations
33 in this section.]

34 (h) If a life, term, or endowment insurance
35 policy or a contract of annuity is owned by the ward
36 when a proceeding for the appointment of a guardian is
37 begun, and it is made to appear that the company
38 issuing the policy or contract of annuity is a life
39 insurance company as defined by this section or the
40 policy or contract is administered by the Veterans

1 Administration, the policy or contract may be
2 continued in full force and effect. All future
3 premiums may be paid out of surplus funds of the ward's
4 estate. The guardian shall apply to the court for an
5 order to continue the policy or contract, or both,
6 according to the existing terms of the policy or
7 contract or to modify the policy or contract to fit any
8 new developments affecting the welfare of the ward.
9 Before any application filed under this subsection is
10 granted, the guardian shall file a report in the court
11 that shows in detail the financial condition of the
12 ward's estate at the time the application is filed.

13 Revisor's Note

14 Section 857(h), Texas Probate Code, provides that
15 certain insurance policies and annuity contracts may
16 be continued in "full force and effect" under
17 specified circumstances. The revised law omits the
18 reference to "force" as unnecessary because, in
19 context, the meaning of that term is included in the
20 meaning of "effect."

21 Revised Law

22 Sec. 1161.106. CONTROL AND OWNERSHIP OF POLICIES OR
23 ANNUITIES. (a) Control of an insurance policy or an annuity
24 contract and of the incidents of ownership in the policy or contract
25 is vested in the guardian of the estate during the ward's life and
26 disability.

27 (b) A right, benefit, or interest that accrues under an
28 insurance policy or annuity contract subject to this subchapter
29 becomes the ward's exclusive property when the ward's disability is
30 terminated. (Tex. Prob. Code, Secs. 857(f), (j).)

31 Source Law

32 [(b) The guardian of the estate may invest in
33 life, term, or endowment insurance policies, or in
34 annuity contracts, or both, issued by a life insurance
35 company or administered by the Veterans
36 Administration, subject to conditions and limitations
37 in this section.]

38 (f) The control of the policy or the annuity
39 contract and of the incidents of ownership in the
40 policy or annuity contract is vested in the guardian
41 during the life and disability of the ward.

42 (j) A right, benefit, or interest that accrues
43 under an insurance or annuity contract that comes
44 under the provisions of this section shall become the
45 exclusive property of the ward when the ward's
46 disability is terminated.

1 [Sections 1161.107-1161.150 reserved for expansion]

2 SUBCHAPTER D. INVESTMENTS IN REAL ESTATE

3 Revised Law

4 Sec. 1161.151. AUTHORITY TO INVEST IN REAL ESTATE;
5 PROCEDURE AND REQUIREMENTS. (a) The guardian of the estate may
6 invest estate assets in real estate if:

7 (1) the guardian believes that the investment is in
8 the ward's best interests;

9 (2) there are on hand sufficient additional assets to
10 provide a return sufficient to provide for:

11 (A) the education, support, and maintenance of
12 the ward and others the ward supports, if applicable; and

13 (B) the maintenance, insurance, and taxes on the
14 real estate in which the guardian wishes to invest;

15 (3) the guardian files a written application with the
16 court requesting a court order authorizing the guardian to make the
17 desired investment and stating the reasons why, in the guardian's
18 opinion, the investment would be for the ward's benefit; and

19 (4) the court issues an order authorizing the
20 investment as provided by this subchapter.

21 (b) If the ward's money is invested in real estate, the
22 title to the real estate shall be made to the ward. The guardian
23 shall inventory, appraise, manage, and account for the real estate
24 as the guardian does with other real estate of the ward. (Tex.
25 Prob. Code, Secs. 860(a), (d).)

26 Source Law

27 Sec. 860. (a) The guardian of the estate may
28 invest estate assets in real estate if:

29 (1) the guardian believes that the
30 investment is in the best interests of the ward;

31 (2) there are on hand sufficient
32 additional assets to provide a return sufficient to
33 provide for:

34 (A) the education, support, and
35 maintenance of the ward and others the ward supports,
36 if applicable; and

37 (B) the maintenance, insurance, and
38 taxes on the real estate in which the guardian wishes
39 to invest;

40 (3) the guardian files a written
41 application with the court requesting a court order
42 authorizing the guardian to make the desired

1 investment and stating the reasons why the guardian is
2 of the opinion that the investment would be for the
3 benefit of the ward; and

4 (4) the court renders an order authorizing
5 the investment as provided by this section.

6 (d) When the money of the ward has been invested
7 in real estate, the title to the real estate shall be
8 made to the ward. The guardian shall inventory,
9 appraise, manage, and account for the real estate as
10 other real estate of the ward.

11 Revised Law

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 Source Law

26 (b) When an application is filed by the guardian
27 under this section, the judge's attention shall be
28 called to the application, and the judge shall make
29 investigation as necessary to obtain all the facts
30 concerning the investment. The judge may not render an
31 opinion or make an order on the application until 10
32 days from the date of the filing of the application
33 have expired. On the hearing of the application, if
34 the court is satisfied that the investment benefits
35 the ward, the court shall issue an order that
36 authorizes the guardian to make the investment. The
37 order shall specify the investment to be made and
38 contain other directions the court thinks are
39 advisable.

40 Revisor's Note

41 Section 860(b), Texas Probate Code, provides that
42 "the judge's attention shall be called to the
43 application" filed under Section 860, Texas Probate
44 Code. "[T]he judge's attention shall be called to the
45 application" is omitted as unnecessary because the

1 judge's duty to investigate "as necessary to obtain all
2 the facts concerning the investment" that is
3 subsequently stated in Section 860(b) requires the
4 judge's attention to be called to the application.

5 Revised Law

6 Sec. 1161.153. COURT APPROVAL OF CONTRACTS REQUIRED. (a)
7 If a contract is made for the investment of money in real estate
8 under a court order, the guardian of the estate shall report the
9 contract in writing to the court.

10 (b) The court shall inquire fully into the contract. If
11 satisfied that the investment will benefit the ward's estate and
12 that the title of the real estate is valid and unencumbered, the
13 court may approve the contract and authorize the guardian to pay
14 money in performance of the contract.

15 (c) The guardian may not pay any money on the contract until
16 the contract is approved by a court order to that effect. (Tex.
17 Prob. Code, Sec. 860(c).)

18 Source Law

19 [(a) The guardian of the estate may invest
20 estate assets in real estate if:

21 . . .
22 (4) the court renders an order authorizing
23 the investment as provided by this section.]

24 (c) When a contract is made for the investment
25 of money in real estate under court order, the guardian
26 shall report the contract in writing to the courts.
27 The court shall inquire fully into the contract. If
28 satisfied that the investment will benefit the estate
29 of the ward and that the title of the real estate is
30 valid and unencumbered, the court may approve the
31 contract and authorize the guardian to pay over the
32 money in performance of the contract. The guardian may
33 not pay any money on the contract until the contract is
34 approved by court order to that effect.

35 [Sections 1161.154-1161.200 reserved for expansion]

36 SUBCHAPTER E. LOANS AND SECURITY FOR LOANS

37 Revised Law

38 Sec. 1161.201. INAPPLICABILITY OF SUBCHAPTER. This
39 subchapter does not apply to an investment in a debenture, bond, or
40 other publicly traded debt security. (Tex. Prob. Code, Sec.
41 858(h).)

1 Source Law

2 (h) This section does not apply to an investment
3 in a debenture, bond, or other publicly traded debt
4 security.

5 Revised Law

6 Sec. 1161.202. AUTHORITY TO MAKE LOANS. (a) If, at any
7 time, the guardian of the estate has on hand money belonging to the
8 ward in an amount that provides a return that is more than is
9 necessary for the education, support, and maintenance of the ward
10 and others the ward supports, if applicable, the guardian may lend
11 the money for a reasonable interest rate.

12 (b) The guardian of the estate is considered to have
13 obtained a reasonable interest rate for a loan for purposes of
14 Subsection (a) if the interest rate is at least equal to 120 percent
15 of the applicable short-term, midterm, or long-term interest rate
16 under Section 7520, Internal Revenue Code of 1986, for the month
17 during which the loan was made. (Tex. Prob. Code, Secs. 858(a)
18 (part), (b).)

19 Source Law

20 Sec. 858. (a) If, at any time, the guardian of
21 the estate has on hand money belonging to the ward in
22 an amount that provides a return that is more than is
23 necessary for the education, support, and maintenance
24 of the ward and others the ward supports, if
25 applicable, the guardian may lend the money for a
26 reasonable rate of interest. . . .

27 (b) A guardian of the estate is considered to
28 have obtained a reasonable rate of interest for a loan
29 for purposes of Subsection (a) of this section if the
30 rate of interest is at least equal to 120 percent of
31 the applicable short-term, midterm, or long-term
32 interest rate under Section 7520, Internal Revenue
33 Code of 1986, as amended, for the month during which
34 the loan was made.

35 Revised Law

36 Sec. 1161.203. LOAN REQUIREMENTS. (a) Except as provided
37 by Subsection (b), the guardian of the estate shall take as
38 collateral the borrower's note for the money that is loaned,
39 secured by:

40 (1) a mortgage with a power of sale on unencumbered
41 real estate located in this state worth at least twice the amount of
42 the note; or

1 Sec. 861. When the guardian of the estate of a
2 ward lends the money of the ward, the guardian may not
3 pay over or transfer any money in consummation of the
4 loan until the guardian has submitted to a reputable
5 attorney for examination all bonds, notes, mortgages,
6 documents, abstracts, and other papers pertaining to
7 the loan and the guardian has received a written
8 opinion from the attorney that all papers pertaining
9 to the loan are regular and that the title to the
10 bonds, notes, or real estate is good. The attorney's
11 fee shall be paid by the borrower. The guardian may
12 obtain a mortgagee's title insurance policy on any real
13 estate loan instead of an abstract and attorney's
14 opinion.

15 Revised Law

16 Sec. 1161.204. GUARDIAN'S DUTY TO REPORT LOAN TO COURT. (a)
17 Not later than the 30th day after the date the guardian of the
18 estate loans money from the estate, the guardian shall file with the
19 court a written report, accompanied and verified by an affidavit,
20 stating fully the facts related to the loan.

21 (b) This section does not apply to a loan made in accordance
22 with a court order. (Tex. Prob. Code, Secs. 858(g), 862.)

23 Source Law

24 [Sec. 858]

25 (g) Not later than the 30th day after the date
26 the guardian of the estate loans money from the estate,
27 the guardian shall file with the court a written
28 report, accompanied by an affidavit, stating fully the
29 facts related to the loan. This subsection does not
30 apply to a loan made in accordance with a court order.

31 Sec. 862. Not later than the 30th day after the
32 date money belonging to a ward's estate is lent, the
33 guardian of the ward's estate shall report to the court
34 in writing, verified by affidavit, stating fully the
35 facts of the loan, unless the loan was made pursuant to
36 a court order.

37 Revised Law

38 Sec. 1161.205. GUARDIAN'S LIABILITY. (a) Except as
39 provided by Subsection (b), a guardian of the estate who loans
40 estate money with the court's approval on security approved by the
41 court is not personally liable if the borrower is unable to repay
42 the money and the security fails.

43 (b) If the guardian committed fraud or was negligent in
44 making or managing the loan, including in collecting the loan, the
45 guardian and the guardian's surety are liable for the loss
46 sustained by the guardianship estate as a result of the fraud or
47 negligence. (Tex. Prob. Code, Sec. 858(c).)

Source Law

(c) Except as provided by this subsection, a guardian of the estate who loans estate money with the court's approval on security approved by the court is not personally liable if the borrower is unable to repay the money and the security fails. If the guardian committed fraud or was negligent in making or managing the loan, including in collecting on the loan, the guardian and the guardian's surety are liable for the loss sustained by the guardianship estate as a result of the fraud or negligence.

Revisor's Note
(End of Subchapter)

Section 856, Texas Probate Code, was repealed by Chapter 549, Acts of the 78th Legislature, Regular Session, 2003, but also amended by Chapter 1103, Acts of the 78th Legislature, Regular Session, 2003. Chapter 1103 enacted Chapter 117, Property Code, the Uniform Prudent Investor Act, and amended Section 856(a), Texas Probate Code, only to make conforming amendments related to the enactment of Chapter 117. Section 36, Article III, Texas Constitution, provides that in such instances the law must be "re-enacted and published at length." Under Section 311.025, Government Code (Code Construction Act), applicable to the revised law, text that is reenacted because of the requirement of Section 36, Article III, Texas Constitution, is not considered to be irreconcilable with additions or omissions in the same text made by another amendment. Unless clearly indicated to the contrary, an amendment that reenacts text in compliance with that constitutional requirement does not indicate legislative intent that the reenacted text prevail over changes in the same text made by another amendment, regardless of the relative dates of enactment. Consequently, it is clear that the Chapter 1103 reenactment of Section 856(a) does not indicate the legislature's intent that the reenactment prevail over the repeal of that section by Chapter 549. As a

result, the revised law omits as repealed Section 856(a). The omitted law reads:

Sec. 856. (a) If a guardian of an estate deems it is in the best interests of the ward the guardian is appointed to represent to invest on behalf of the ward in the Texas tomorrow constitutional trust fund established by Subchapter F, Chapter 54, Education Code, or to invest in or sell any property or security in which a trustee is authorized to invest by either Chapter 117 or Subchapter F, Chapter 113, of the Texas Trust Code (Subtitle B, Title 9, Property Code), and the investment or sale is not expressly permitted by other sections of this chapter, the guardian may file a written application in the court in which the guardianship is pending that asks for an order authorizing the guardian to make the desired investment or sale and states the reason why the guardian is of the opinion that the investment or sale would be beneficial to the ward. A citation or notice is not necessary under this subsection unless ordered by the court.

CHAPTER 1162. TAX-MOTIVATED AND CHARITABLE AND NONPROFIT GIFTS
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Sec. 1162.001. AUTHORITY TO ESTABLISH ESTATE PLAN 462

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SUBCHAPTER B. CHARITABLE AND NONPROFIT GIFTS

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1 CHAPTER 1162. TAX-MOTIVATED AND CHARITABLE AND NONPROFIT GIFTS

2 SUBCHAPTER A. TAX-MOTIVATED GIFTS

3 Revised Law

4 Sec. 1162.001. AUTHORITY TO ESTABLISH ESTATE PLAN. On
5 application of the guardian of the estate or any interested party,
6 after the posting of notice and hearing, and on a showing that the
7 ward will probably remain incapacitated during the ward's lifetime,
8 the court may enter an order that authorizes the guardian to apply
9 the principal or income of the ward's estate that is not required
10 for the support of the ward or the ward's family during the ward's
11 lifetime toward the establishment of an estate plan for the purpose
12 of minimizing income, estate, inheritance, or other taxes payable
13 out of the ward's estate. On the ward's behalf, the court may
14 authorize the guardian to make gifts, outright or in trust, of the
15 ward's personal property or real estate to or for the benefit of:

16 (1) an organization to which charitable contributions
17 may be made under the Internal Revenue Code of 1986 and in which it
18 is shown the ward would reasonably have an interest;

19 (2) the ward's spouse, descendant, or other person
20 related to the ward by blood or marriage who is identifiable at the
21 time of the order;

22 (3) a devisee under the ward's last validly executed
23 will, trust, or other beneficial instrument, if the instrument
24 exists; and

25 (4) a person serving as guardian of the ward, if the
26 person is eligible under Subdivision (2) or (3). (Tex. Prob. Code,
27 Sec. 865(a).)

28 Source Law

29 Sec. 865. (a) On application of the guardian of
30 the estate or any interested party and after the
31 posting of notice, the court, after hearing, may enter
32 an order that authorizes the guardian to apply the
33 principal or income of the ward's estate that is not
34 required for the support of the ward or the ward's
35 family during the ward's lifetime toward the
36 establishment of an estate plan for the purpose of
37 minimizing income, estate, inheritance, or other taxes
38 payable out of the ward's estate on a showing that the
39 ward will probably remain incapacitated during the
40 ward's lifetime. On the ward's behalf, the court may

1 authorize the guardian to make gifts, outright or in
2 trust, of the ward's personal property or real estate
3 to or for the benefit of:

4 (1) an organization to which charitable
5 contributions may be made under the Internal Revenue
6 Code and in which it is shown the ward would reasonably
7 have an interest;

8 (2) the ward's spouse, descendant, or
9 other person related to the ward by blood or marriage
10 who are identifiable at the time of the order;

11 (3) a devisee under the ward's last validly
12 executed will, trust, or other beneficial instrument
13 if the instrument exists; and

14 (4) a person serving as guardian of the
15 ward if the person is eligible under either
16 Subdivision (2) or (3) of this subsection.

17 Revisor's Note

18 Section 865(a)(1), Texas Probate Code, refers to
19 the "Internal Revenue Code." Section 2, Tax Reform Act
20 of 1986, Pub. L. No. 99-514, provides that the proper
21 citation for that code is "Internal Revenue Code of
22 1986." The revised law is drafted accordingly.

23 Revised Law

24 Sec. 1162.002. ESTATE PLAN: CONTENTS AND MODIFICATION. (a)
25 The person making an application to the court under Section
26 1162.001 shall:

27 (1) outline the proposed estate plan; and

28 (2) state all the benefits that are to be derived from
29 the estate plan.

30 (b) The application must indicate that the planned
31 disposition is consistent with the ward's intentions, if the ward's
32 intentions can be ascertained. If the ward's intentions cannot be
33 ascertained, the ward will be presumed to favor reduction in the
34 incidence of the various forms of taxation and the partial
35 distribution of the ward's estate as provided by Sections 1162.001
36 and 1162.004.

37 (c) A subsequent modification of an approved estate plan may
38 be made by similar application to the court. (Tex. Prob. Code,
39 Secs. 865(b), (d).)

40 Source Law

41 (b) The person making an application to the
42 court under this section shall outline the proposed
43 estate plan and set forth all the benefits that are to
44 be derived from the estate plan. The application must

1 indicate that the planned disposition is consistent
2 with the ward's intentions if the ward's intentions can
3 be ascertained. If the ward's intentions cannot be
4 ascertained, the ward will be presumed to favor
5 reduction in the incidence of the various forms of
6 taxation and the partial distribution of the ward's
7 estate as provided by this section.

8 (d) A subsequent modification of an approved
9 plan may be made by similar application to the court.

10 Revisor's Note

11 (1) Section 865(b), Texas Probate Code, refers
12 to an application made "under this section." The
13 portion of Section 865, Texas Probate Code, under
14 which an application for the establishment of an
15 estate plan is made is revised in this chapter as
16 Section 1162.001. Section 865(d), Texas Probate Code,
17 provides for modification of an approved plan to be
18 made by "similar application to the court," meaning an
19 application described by Section 865(a), Texas Probate
20 Code, revised in this chapter as Section 1162.001. The
21 revised law therefore substitutes a reference to
22 Section 1162.001 for the reference to "this section."

23 (2) Section 865(b), Texas Probate Code, refers
24 to a "reduction in the incidence of the various forms
25 of taxation and the partial distribution of the ward's
26 estate as provided by this section." The portions of
27 Section 865, Texas Probate Code, under which the
28 incidence of certain forms of taxation may be reduced
29 and a ward's estate may be partially distributed are
30 Sections 865(a) and (f), Texas Probate Code. Those
31 subsections are revised in this chapter as Sections
32 1162.001 and 1162.004. The revised law therefore
33 substitutes a reference to Sections 1162.001 and
34 1162.004 for the reference to "this section."

35 (3) Section 865(d), Texas Probate Code, refers
36 to "an approved plan." For consistency of terminology
37 throughout this chapter and because it is clear from
38 the context of Section 865, Texas Probate Code, that

1 the term "plan" refers to an estate plan, the revised
2 law substitutes "an approved estate plan" for the
3 quoted language.

4 Revised Law

5 Sec. 1162.003. NOTICE OF APPLICATION FOR ESTABLISHMENT OF
6 ESTATE PLAN. A person who makes an application to the court under
7 Section 1162.001 shall mail notice of the application by certified
8 mail to:

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

11 (2) the ward's spouse;

12 (3) the ward's dependents; and

13 (4) any other person as directed by the court. (Tex.
14 Prob. Code, Sec. 865(e).)

15 Source Law

16 (e) A person who makes an application to the
17 court under this section shall mail notice of the
18 application by certified mail to:

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

22 (2) the ward's spouse;

23 (3) the ward's dependents; and

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

26 Revisor's Note

27 Section 865(e), Texas Probate Code, refers to an
28 application to the court made "under this section."

29 The revised law substitutes a reference to Section
30 1162.001 for the reference to "this section" for the
31 reason stated in Revisor's Note (1) to Section
32 1162.002.

33 Revised Law

34 Sec. 1162.004. AUTHORITY TO MAKE PERIODIC GIFTS. (a) In an
35 order entered under Section 1162.001, the court may authorize the
36 guardian to make, without subsequent application to or order of the
37 court, gifts as provided by that section on an annual or other
38 periodic basis if the court finds it to be in the best interest of
39 the ward and the ward's estate.

1 (b) The court, on the court's own motion or on the motion of
2 a person interested in the welfare of the ward, may modify or set
3 aside an order entered under Subsection (a) if the court finds that
4 the ward's financial condition has changed in such a manner that
5 authorizing the guardian to make gifts of the estate on a continuing
6 basis is no longer in the best interest of the ward and the ward's
7 estate. (Tex. Prob. Code, Sec. 865(f).)

8 Source Law

9 (f) In an order entered under Subsection (a) of
10 this section, the court may authorize the guardian to
11 make gifts as provided by Subsection (a) of this
12 section on an annual or other periodic basis without
13 subsequent application to or order of the court if the
14 court finds it to be in the best interest of the ward
15 and the ward's estate. The court, on the court's own
16 motion or on the motion of a person interested in the
17 welfare of the ward, may modify or set aside an order
18 entered under this subsection if the court finds that
19 the ward's financial condition has changed in such a
20 manner that authorizing the guardian to make gifts of
21 the estate on a continuing basis is no longer in the
22 best interest of the ward and the ward's estate.

23 Revised Law

24 Sec. 1162.005. APPLICATION FOR INSPECTION OF CERTAIN
25 DOCUMENTS. (a) On the filing of an application under Section
26 1162.001 and for the purpose of establishing an estate plan under
27 that section, the guardian of the ward's estate may apply to the
28 court for an order to seek an in camera inspection of a copy of a
29 will, codicil, trust, or other estate planning instrument of the
30 ward as a means of obtaining access to the instrument.

31 (b) An application filed under this section must:
32 (1) be sworn to by the guardian;
33 (2) list each instrument requested for inspection; and
34 (3) state one or more reasons supporting the necessity
35 to inspect each requested instrument for the purpose described by
36 Subsection (a). (Tex. Prob. Code, Secs. 865A(a), (b).)

37 Source Law

38 Sec. 865A. (a) On the filing of an application
39 under Section 865 of this code, the guardian of the
40 ward's estate may apply to the court for an order to
41 seek an in camera inspection of a true copy of a will,
42 codicil, trust, or other estate planning instrument of
43 the ward as a means of obtaining access to the
44 instrument for purposes of establishing an estate plan

1 under Section 865 of this code.

2 (b) An application filed under this section
3 must:

- 4 (1) be sworn to by the guardian;
5 (2) list all of the instruments requested
6 for inspection; and
7 (3) state one or more reasons supporting
8 the necessity to inspect each requested instrument for
9 the purpose described by Subsection (a) of this
10 section.

11 Revisor's Note

12 (1) Section 865A(a), Texas Probate Code, refers
13 to the filing of an application and to establishing an
14 estate plan "under Section 865 of this code." The
15 portion of Section 865, Texas Probate Code, under
16 which an application is filed and the establishment of
17 an estate plan is authorized is revised in this chapter
18 as Section 1162.001. The revised law therefore
19 substitutes references to Section 1162.001 for the
20 references to Section 865, Texas Probate Code.

21 (2) Section 865A(a), Texas Probate Code, refers
22 to a "true copy" of a will, codicil, trust, or other
23 estate planning instrument. The revised law omits
24 "true" as unnecessary because a document purporting to
25 be a copy is not a copy if it is different from the
26 original document. Similar changes are made
27 throughout this chapter.

28 Revised Law

29 Sec. 1162.006. NOTICE OF APPLICATION FOR INSPECTION. (a) A
30 person who files an application under Section 1162.005 shall send a
31 copy of the application to:

- 32 (1) each person who has custody of an instrument
33 listed in the application;
34 (2) the ward's spouse;
35 (3) the ward's dependents;
36 (4) all devisees under a will, trust, or other
37 beneficial instrument relating to the ward's estate; and
38 (5) any other person as directed by the court.

39 (b) Notice required by Subsection (a) must be delivered by:

1 (1) registered or certified mail to a person described
2 by Subsection (a)(1); and

3 (2) certified mail to a person described by Subsection
4 (a)(2), (3), (4), or (5). (Tex. Prob. Code, Secs. 865A(c), (d)
5 (part).)

6 Source Law

7 (c) A person who files an application under this
8 section shall send a copy of the application to:

9 (1) each person who has custody of an
10 instrument 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
14 other beneficial instrument relating to the ward's
15 estate; and

16 (5) any other person as directed by the
17 court.

18 (d) Notice required by Subsection (c) of this
19 section must be delivered by certified mail to a person
20 described by Subsection (c)(2), (3), (4), or (5) of
21 this section and by registered or certified mail to a
22 person described by Subsection (c)(1) of this
23 section. . . .

24 Revisor's Note

25 Section 865A(c), Texas Probate Code, refers to an
26 application filed under "this section." The portion of
27 Section 865A, Texas Probate Code, under which an
28 application for the inspection of certain documents is
29 made is revised in this chapter as Section 1162.005.
30 The revised law therefore substitutes a reference to
31 Section 1162.005 for the reference to "this section."

32 Revised Law

33 Sec. 1162.007. HEARING ON APPLICATION FOR INSPECTION;
34 INSPECTION. (a) After the 10th day after the date on which the
35 applicant complies with the notice requirement under Section
36 1162.006, the applicant may request that a hearing be held on the
37 application. Notice of the date, time, and place of the hearing
38 must be given by the applicant to each person described by Section
39 1162.006(a)(1) when the court sets a date for a hearing on the
40 application.

41 (b) After the conclusion of a hearing on the application for
42 inspection and on a finding that good cause exists for an in camera

1 inspection of a requested instrument, the court shall direct the
2 person that has custody of the requested will, codicil, trust, or
3 other estate planning instrument to deliver a copy of the
4 instrument to the court for in camera inspection only. After
5 conducting an in camera inspection of the instrument, the court, if
6 good cause exists, shall release all or part of the instrument to
7 the applicant only for the purpose described by Section
8 1162.005(a).

9 (c) An attorney does not violate the attorney-client
10 privilege solely by complying with a court order to release an
11 instrument subject to this section and Sections 1162.005 and
12 1162.006. Notwithstanding Section 22.004, Government Code, the
13 supreme court may not amend or adopt rules in conflict with this
14 subsection. (Tex. Prob. Code, Secs. 865A(d) (part), (e), (g).)

15 Source Law

16 (d) . . . After the 10th day after the date on
17 which the applicant complies with the notice
18 requirement, the applicant may request that a hearing
19 be held on the application. Notice of the date, time,
20 and place of the hearing must be given by the applicant
21 to each person described by Subsection (c)(1) of this
22 section when the court sets a date for a hearing on the
23 application.

24 (e) After the conclusion of a hearing on the
25 application and on a finding that there is good cause
26 for an in camera inspection of a requested instrument,
27 the court shall direct the person that has custody of
28 the requested will, codicil, trust, or other estate
29 planning instrument to deliver a true copy of the
30 instrument to the court for in camera inspection only.
31 After conducting an in camera review of the
32 instrument, the court, if good cause exists, shall
33 release all or part of the instrument to the applicant
34 only for the purpose described by Subsection (a) of
35 this section.

36 (g) An attorney does not violate the
37 attorney-client privilege solely by complying with a
38 court order to release an instrument subject to this
39 section. Notwithstanding Section 22.004, Government
40 Code, the supreme court may not amend or adopt rules in
41 conflict with this subsection.

42 Revisor's Note

43 (1) Section 865A(a), Texas Probate Code, which
44 is revised in Section 1162.005 of this code,
45 authorizes the guardian of a ward's estate to apply for
46 an "in camera inspection" of certain instruments.

1 Section 865A(e), Texas Probate Code, refers both to an
2 "in camera inspection" of an instrument and to an "in
3 camera review" of an instrument. The revised law
4 substitutes the term "inspection" for the term
5 "review" for consistency of terminology and because it
6 is clear from the context of Section 865A, Texas
7 Probate Code, that the "in camera review" is the same
8 as the "in camera inspection."

9 (2) Section 865A(g), Texas Probate Code, refers
10 to the attorney-client privilege in relation to an
11 attorney's compliance with a court order to release,
12 for in camera inspection, an instrument "subject to
13 this section," meaning Section 865A. The relevant
14 portions of Section 865A are revised in this chapter as
15 this section and Sections 1162.005 and 1162.006. The
16 revised law is drafted accordingly.

17 Revised Law

18 Sec. 1162.008. GUARDIAN AD LITEM. The court may appoint a
19 guardian ad litem for the ward or an interested party at any stage
20 of proceedings under this subchapter if it is considered advisable
21 for the protection of the ward or the interested party. (Tex. Prob.
22 Code, Secs. 865(c), 865A(f).)

23 Source Law

24 [Sec. 865]

25 (c) The court may appoint a guardian ad litem
26 for the ward or any interested party at any stage of
27 the proceedings if it is deemed advisable for the
28 protection of the ward or the interested party.

29 [Sec. 865A]

30 (f) The court may appoint a guardian ad litem
31 for the ward or an interested party at any stage of the
32 proceedings if it is considered advisable for the
33 protection of the ward or the interested party.

34 [Sections 1162.009-1162.050 reserved for expansion]

35 SUBCHAPTER B. CHARITABLE AND NONPROFIT GIFTS

36 Revised Law

37 Sec. 1162.051. APPLICATION TO MAKE GIFT. The guardian of
38 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 Source Law

12 Sec. 866. (a) The guardian of the estate may at
13 any time file the guardian's sworn application in
14 writing with the county clerk requesting an order from
15 the court in which the guardianship is pending
16 authorizing the guardian to contribute from the income
17 of the ward's estate a specific amount of money as
18 stated in the application, to one or more:

19 (1) designated corporations, trusts, or
20 community chests, funds, or foundations, organized and
21 operated exclusively for religious, charitable,
22 scientific, literary, or educational purposes; or

23 (2) designated nonprofit federal, state,
24 county, or municipal projects operated exclusively for
25 public health or welfare.

26 Revised Law

27 Sec. 1162.052. HEARING ON APPLICATION TO MAKE GIFT. (a)
28 The county clerk shall immediately call the filing of an
29 application under Section 1162.051 to the attention of the judge of
30 the court.

31 (b) The judge shall designate, by written order filed with
32 the clerk, a day to hear the application. The application must
33 remain on file for at least 10 days before the hearing is held.

34 (c) The judge may postpone or continue the hearing from time
35 to time until the judge is satisfied concerning the application.
36 (Tex. Prob. Code, Sec. 866(b).)

37 Source Law

38 (b) When an application is filed under this
39 section, the county clerk shall immediately call the
40 filing of the application to the attention of the judge
41 of the court. The judge, by written order filed with
42 the clerk, shall designate a day to hear the
43 application. The application shall remain on file at
44 least 10 days before the hearing is held. The judge

1 may postpone or continue the hearing from time to time
2 until the judge is satisfied concerning the
3 application.

4 Revised Law

5 Sec. 1162.053. ORDER AUTHORIZING GIFT. On the conclusion
6 of a hearing under Section 1162.052, the court may enter an order
7 authorizing the guardian to make a contribution from the income of
8 the ward's estate to a particular donee designated in the
9 application and order if the court is satisfied and finds from the
10 evidence that:

11 (1) the amount of the proposed contribution stated in
12 the application will probably not exceed 20 percent of the net
13 income of the ward's estate for the current calendar year;

14 (2) the net income of the ward's estate for the current
15 calendar year exceeds, or probably will exceed, \$25,000;

16 (3) the full amount of the contribution, if made, will
17 probably be deductible from the ward's gross income in determining
18 the net income of the ward under applicable federal income tax laws
19 and rules;

20 (4) the condition of the ward's estate justifies a
21 contribution in the proposed amount; and

22 (5) the proposed contribution is reasonable in amount
23 and is for a worthy cause. (Tex. Prob. Code, Sec. 866(c).)

24 Source Law

25 (c) On the conclusion of a hearing under this
26 section, the court may enter an order authorizing the
27 guardian to make a contribution from the income of the
28 ward's estate to a particular donee designated in the
29 application and order if the court is satisfied and
30 finds from the evidence that:

31 (1) the amount of the proposed
32 contribution stated in the application will probably
33 not exceed 20 percent of the net income of the ward's
34 estate for the current calendar year;

35 (2) the net income of the ward's estate for
36 the current calendar year exceeds, or probably will
37 exceed, \$25,000;

38 (3) the full amount of the contribution,
39 if made, will probably be deductible from the ward's
40 gross income in determining the net income of the ward
41 under applicable federal income tax laws and rules;

42 (4) the condition of the ward's estate
43 justifies a contribution in the proposed amount; and

44 (5) the proposed contribution is
45 reasonable in amount and is for a worthy cause.

1	<u>Revisor's Note</u>	
2	Section 866(c), Texas Probate Code, refers to a	
3	hearing "under this section." The portion of Section	
4	866, Texas Probate Code, under which a hearing is held	
5	is revised in this chapter as Section 1162.052. The	
6	revised law therefore substitutes a reference to	
7	Section 1162.052 for the reference to "this section."	
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9	<u>Revised Law</u>	
10	Sec. 1163.001. INITIAL ANNUAL ACCOUNT OF ESTATE. (a) Not	
11	later than the 60th day after the first anniversary of the date the	
12	guardian of the estate of a ward qualifies, unless the court extends	
13	that period, the guardian shall file with the court an account	
14	consisting of a written exhibit made under oath that:	
15	(1) lists all claims against the estate presented to	
16	the guardian during the period covered by the account; and	
17	(2) specifies:	
18	(A) which claims have been:	
19	(i) allowed by the guardian;	
20	(ii) paid by the guardian; or	
21	(iii) rejected by the guardian and the date	
22	the claims were rejected; and	
23	(B) which claims have been the subject of a	
24	lawsuit and the status of that lawsuit.	
25	(b) The account must:	
26	(1) show all property that has come to the guardian's	
27	knowledge or into the guardian's possession that was not previously	
28	listed or inventoried as the ward's property;	
29	(2) show any change in the ward's property that was not	
30	previously reported;	
31	(3) provide a complete account of receipts and	
32	disbursements for the period covered by the account, including the	
33	source and nature of the receipts and disbursements, with separate	
34	listings for principal and income receipts;	

1 (4) provide a complete, accurate, and detailed
2 description of:

3 (A) the property being administered;

4 (B) the condition of the property and the use
5 being made of the property; and

6 (C) if rented, the terms on which and the price
7 for which the property was rented;

8 (5) show the cash balance on hand and the name and
9 location of the depository where the balance is kept;

10 (6) show any other cash held in a savings account or
11 other manner that was deposited subject to court order and the name
12 and location of the depository for that cash; and

13 (7) provide a detailed description of the personal
14 property of the estate that shows how and where the property is held
15 for safekeeping.

16 (c) For bonds, notes, and other securities, the description
17 required by Subsection (b)(7) must include:

18 (1) the names of the obligor and obligee or, if payable
19 to bearer, a statement that the bond, note, or other security is
20 payable to bearer;

21 (2) the date of issue and maturity;

22 (3) the interest rate;

23 (4) the serial number or other identifying numbers;

24 (5) the manner in which the property is secured; and

25 (6) other information necessary to fully identify the
26 bond, note, or other security. (Tex. Prob. Code, Sec. 741(a).)

27 Source Law

28 Sec. 741. (a) Not later than the 60th day after
29 the expiration of 12 months from the date of
30 qualification, unless the court extends that time
31 period, the guardian of the estate of a ward shall
32 return to the court an exhibit in writing under oath
33 setting forth a list of all claims against the estate
34 that were presented to the guardian within the period
35 covered by the account and specifying which claims
36 have been allowed, paid, or rejected by the guardian
37 and the date when any claim was rejected and which
38 claims have been the subject of a lawsuit and the
39 status of the lawsuit, and showing:

40 (1) all property that has come to the
41 guardian's knowledge or into the guardian's possession

1 that has not been previously listed or inventoried as
2 property of the ward;

3 (2) any changes in the property of the ward
4 that have not been previously reported;

5 (3) a complete account of receipts and
6 disbursements for the period covered by the account,
7 and the source and nature of the receipts and
8 disbursements, with receipts of principal and income
9 shown separately;

10 (4) a complete, accurate, and detailed
11 description of the property being administered, the
12 condition of the property, and the use being made of
13 the property and, if rented, the terms of the rental
14 and the price for which the property is being rented;

15 (5) the cash balance on hand and the name
16 and location of the depository where the cash balance
17 is kept and any other sums of cash in savings accounts
18 or other form, deposited subject to court order, and
19 the name and location of the depository of the cash;
20 and

21 (6) a detailed description of personal
22 property of the estate, that, with respect to bonds,
23 notes, and other securities, includes the names of
24 obligor and obligee, or if payable to bearer, so state;
25 the date of issue and maturity; the rate of interest;
26 serial or other identifying numbers; in what manner
27 the property is secured; and other data necessary to
28 identify the same fully, and how and where held for
29 safekeeping.

30 Revisor's Note

31 Section 741(a), Texas Probate Code, refers to a
32 written exhibit a guardian of the estate of the ward
33 must "return" to the court. Throughout this chapter,
34 the revised law substitutes "file" for "return" for
35 consistency of terminology throughout this chapter.

36 Revised Law

37 Sec. 1163.002. ANNUAL ACCOUNT REQUIRED UNTIL ESTATE CLOSED.

38 (a) A guardian of the estate shall file an annual account
39 conforming to the essential requirements of Section 1163.001
40 regarding changes in the estate assets occurring since the date the
41 most recent previous account was filed.

42 (b) The annual account must be filed in a manner that allows
43 the court or an interested person to ascertain the true condition of
44 the estate, with respect to money, securities, and other property,
45 by adding to the balances forwarded from the most recent previous
46 account the amounts received during the period covered by the
47 account and subtracting the disbursements made during that period.

48 (c) The description of property sufficiently described in
49 an inventory or previous account may be made in the annual account

1 by reference to the property. (Tex. Prob. Code, Sec. 741(b).)

2 Source Law

3 (b) A guardian of the estate shall file annual
4 accounts conforming to the essential requirements of
5 those in Subsection (a) of this section as to changes
6 in the assets of the estate after rendition of the
7 former account so that the true condition of the
8 estate, with respect to money or securities or other
9 property, can be ascertained by the court or by any
10 interested person, by adding to the balances forward
11 the receipts, and then subtracting the disbursements.
12 The description of property sufficiently described in
13 an inventory or previous account may be by reference to
14 the property.

15 Revised Law

16 Sec. 1163.003. SUPPORTING VOUCHERS AND OTHER DOCUMENTS
17 ATTACHED TO ACCOUNT. (a) The guardian of the estate shall attach
18 to each annual account:

19 (1) a voucher for each item of credit claimed in the
20 account or, to support the item in the absence of the voucher, other
21 evidence satisfactory to the court;

22 (2) an official letter from the bank or other
23 depository where the money on hand of the estate or ward is
24 deposited that shows the amounts in general or special deposits;
25 and

26 (3) proof of the existence and possession of:

27 (A) securities owned by the estate or shown by
28 the account; and

29 (B) other assets held by a depository subject to
30 court order.

31 (b) An original voucher submitted to the court may on
32 application be returned to the guardian after approval of the
33 annual account. (Tex. Prob. Code, Sec. 741(c) (part).)

34 Source Law

35 (c) The following shall be annexed to all annual
36 accounts of guardians of estates:

37 (1) proper vouchers for each item of
38 credit claimed in the account, or, in the absence of a
39 voucher, the item must be supported by evidence
40 satisfactory to the court, and original vouchers may,
41 on application, be returned to the guardian after
42 approval of the guardian's account;

43 (2) an official letter from the bank or
44 other depository in which the money on hand of the
45 estate or ward is deposited that shows the amounts in

1 general or special deposits; and
2 (3) proof of the existence and possession
3 of securities owned by the estate, or shown by the
4 accounting, and other assets held by a depository
5 subject to court order,

6 Revisor's Note

7 Section 741(c)(1), Texas Probate Code, refers to
8 "proper vouchers" for each item of credit. The revised
9 law omits "proper" because an improper voucher would
10 not satisfy the requirements of law.

11 Revised Law

12 Sec. 1163.004. METHOD OF PROOF FOR SECURITIES AND OTHER
13 ASSETS. (a) The proof required by Section 1163.003(a)(3) must be
14 by:

15 (1) an official letter from the bank or other
16 depository where the securities or other assets are held for
17 safekeeping, and if the depository is the guardian, the official
18 letter must be signed by a representative of the depository other
19 than the depository verifying the annual account;

20 (2) a certificate of an authorized representative of a
21 corporation that is surety on the guardian's bonds;

22 (3) a certificate of the clerk or a deputy clerk of a
23 court of record in this state; or

24 (4) an affidavit of any other reputable person
25 designated by the court on request of the guardian or other
26 interested party.

27 (b) A certificate or affidavit described by Subsection (a)
28 must:

29 (1) state that the affiant has examined the assets
30 that the guardian exhibited to the affiant as assets of the estate
31 for which the annual account is made;

32 (2) describe the assets by reference to the account or
33 in another manner that sufficiently identifies the assets
34 exhibited; and

35 (3) state the time and the place the assets were
36 exhibited.

37 (c) Instead of attaching a certificate or an affidavit, the

1 guardian may exhibit the securities to the judge of the court, who
2 shall endorse on the annual account, or include in the judge's order
3 with respect to the account, a statement that the securities shown
4 to the judge as on hand were exhibited to the judge and that the
5 securities were the same as those shown in the account, or note any
6 variance. If the securities are exhibited at a location other than
7 where the securities are deposited for safekeeping, that exhibit is
8 at the guardian's own expense and risk.

9 (d) The judge of the court may require:

10 (1) additional evidence of the existence and custody
11 of the securities and other personal property as the judge
12 considers proper; and

13 (2) the guardian at any time to exhibit the securities
14 to the judge or another person designated by the judge at the place
15 where the securities are held for safekeeping. (Tex. Prob. Code,
16 Secs. 741(c) (part), (d).)

17 Source Law

18 (c) [The following shall be annexed to all
19 annual accounts of guardians of estates:

20 . . .
21 (3) proof of the existence and possession
22 of securities owned by the estate, or shown by the
23 accounting, and other assets held by a depository
24 subject to court order,] the proof by one of the
25 following means:

26 (A) an official letter from the bank
27 or other depository that holds the securities or other
28 assets for safekeeping; provided, that if the
29 depository is the representative, the official letter
30 shall be signed by a representative of the depository
31 other than the depository that verifies the account;

32 (B) a certificate of an authorized
33 representative of the corporation that is the surety
34 on the representative's bonds;

35 (C) a certificate of the clerk or a
36 deputy clerk of a court of record in this state; or

37 (D) an affidavit of any other
38 reputable person designated by the court on request of
39 the guardian or other interested party.

40 (d) A certificate or affidavit under this
41 section shall be to the effect that the affiant has
42 examined the assets exhibited to the affiant by the
43 guardian as assets of the estate in which the
44 accounting is made, shall describe the assets by
45 reference to the account or otherwise sufficiently to
46 identify those assets exhibited, and shall state the
47 time when and the place where the assets were
48 exhibited. Instead of using a certificate or an
49 affidavit, the representative may exhibit the
50 securities to the judge of the court who shall endorse
51 on the account, or include in the judge's order with

1 respect to the account, a statement that the
2 securities shown to the judge as on hand were in fact
3 exhibited to the judge and that those securities
4 exhibited to the judge were the same as those shown in
5 the account, or note any variance. If the securities
6 are exhibited at any place other than where deposited
7 for safekeeping, it shall be at the expense and risk of
8 the representative. The judge may require additional
9 evidence as to the existence and custody of the
10 securities and other personal property as in the
11 judge's discretion the judge considers proper, and the
12 judge may require the representative to exhibit the
13 securities to the judge, or any person designated by
14 the judge, at any time at the place where the
15 securities are held for safekeeping.

16 Revisor's Note

17 (1) Section 741(c)(3)(A), Texas Probate Code,
18 provides for a guardian of the estate to attach to an
19 annual account as proof of the existence of securities
20 or other assets an official letter from a depository
21 and imposes additional requirements if "the
22 representative" is the depository. Section
23 741(c)(3)(B) also authorizes as proof a certificate of
24 an authorized representative of the corporate surety
25 on "the representative's" bonds. Section 741(d),
26 Texas Probate Code, provides an additional manner of
27 proof in which "the representative" may exhibit
28 securities to the judge and provides that "the
29 representative" bears the risk and expense of
30 exhibiting the securities at a place other than where
31 deposited for safekeeping. Section 741(d) also
32 provides that the judge may require "the
33 representative" to exhibit the securities to the judge
34 or another person. The revised law substitutes
35 references to the guardian for the cited references to
36 the representative because Section 601(23), Texas
37 Probate Code, revised as Section 1002.028 of this
38 code, defines "representative" to include a guardian,
39 and it is clear from the context of Section 741 that
40 the cited references to the representative refer to
41 the guardian of the estate who is required to file an
42 account under that section and who may be required to

1 give bond under the provisions revised in Chapter 1105
2 of this code.

3 (2) Section 741(d), Texas Probate Code, refers
4 to "using a certificate or an affidavit" as proof of
5 the existence and possession of certain securities and
6 other assets. Because it is clear in context that
7 "using" is referring to attaching the proof to the
8 annual account as previously referenced in Section
9 741(c) and revised in Section 1163.003(a) of this
10 chapter, the revised law substitutes "attaching a
11 certificate or an affidavit" for the reference to
12 "using a certificate or an affidavit" for consistency
13 of terminology.

14 Revised Law

15 Sec. 1163.005. VERIFICATION OF ACCOUNT AND STATEMENT
16 REGARDING TAXES. (a) The guardian of the estate shall attach to an
17 account the guardian's affidavit stating:

18 (1) that the account contains a correct and complete
19 statement of the matters to which the account relates;

20 (2) that the guardian has paid the bond premium for the
21 next accounting period;

22 (3) that the guardian has filed all tax returns of the
23 ward due during the accounting period; and

24 (4) that the guardian has paid all taxes the ward owed
25 during the accounting period, the amount of the taxes, the date the
26 guardian paid the taxes, and the name of the governmental entity to
27 which the guardian paid the taxes.

28 (b) If on the filing of the account the guardian of the
29 estate has failed on the ward's behalf to file a tax return or pay
30 taxes due, the guardian shall attach to the account a description of
31 the taxes and the reasons for the guardian's failure to file the
32 return or pay the taxes. (Tex. Prob. Code, Secs. 741(e), (f).)

33 Source Law

34 (e) The guardian of the estate filing the
35 account shall attach to the account the guardian's

1 affidavit that:

2 (1) the account contains a correct and
3 complete statement of the matters to which the account
4 relates;

5 (2) the guardian has paid the bond premium
6 for the next accounting period;

7 (3) the guardian has filed all tax returns
8 of the ward due during the accounting period; and

9 (4) the guardian has paid all taxes the
10 ward owed during the accounting period, showing:

11 (A) the amount of the taxes;

12 (B) the date the guardian paid the
13 taxes; and

14 (C) the name of the governmental
15 entity to which the guardian paid the taxes.

16 (f) If the guardian, on the ward's behalf, has
17 not filed a tax return or paid taxes that are due on the
18 filing of the account under this section, the guardian
19 of the estate filing the account shall attach to the
20 account a description of the taxes and the reasons for
21 the guardian's failure to file the return or pay the
22 taxes.

23 Revised Law

24 Sec. 1163.006. WAIVER OF ACCOUNT FILING. If the ward's
25 estate produces negligible or fixed income, the court may waive the
26 filing of annual accounts and may permit the guardian to:

27 (1) receive all estate income and apply the income to
28 the support, maintenance, and education of the ward; and

29 (2) account to the court for the estate income and
30 corpus when the estate must be closed. (Tex. Prob. Code, Sec.
31 741(g).)

32 Source Law

33 (g) If the estate produces negligible or fixed
34 income, the court has the power to waive the filing of
35 annual accounts, and the court may permit the guardian
36 to receive all income and apply it to the support,
37 maintenance, and education of the ward and account to
38 the court for income and corpus of the estate when the
39 estate must be closed.

40 [Sections 1163.007-1163.050 reserved for expansion]

41 SUBCHAPTER B. ACTION ON ANNUAL ACCOUNT

42 Revised Law

43 Sec. 1163.051. FILING AND CONSIDERATION OF ANNUAL ACCOUNT.

44 (a) The guardian of the estate shall file an annual account with the
45 county clerk. The county clerk shall note the filing on the judge's
46 docket.

47 (b) An annual account must remain on file for 10 days after
48 the date the account is filed before being considered by the judge.

1 After the expiration of that period, the judge shall consider the
2 account and may continue the hearing on the account until fully
3 advised on all account items.

4 (c) The court may not approve the annual account unless
5 possession of cash, listed securities, or other assets held in
6 safekeeping or on deposit under court order has been proven as
7 required by law. (Tex. Prob. Code, Secs. 742(a), (b), (c), (d),
8 (e).)

9 Source Law

10 Sec. 742. (a) The rules in this section govern the
11 handling of annual accounts.

12 (b) Annual accounts shall be filed with the
13 county clerk, and the filing of the accounts shall be
14 noted on the judge's docket.

15 (c) Before being considered by the judge, the
16 account must remain on file for 10 days.

17 (d) After the expiration of 10 days after the
18 filing of an annual account, the judge shall consider
19 the annual account, and may continue the hearing on the
20 account until the judge is fully advised as to all
21 items of the account.

22 (e) An accounting may not be approved unless
23 possession of cash, listed securities, or other assets
24 held in safekeeping or on deposit under court order has
25 been proved as required by law.

26 Revisor's Note

27 Section 742(b), Texas Probate Code, requires an
28 annual account to be filed with the county clerk.
29 While the source law does not specify who is required
30 to file the annual account, Sections 741(a) and (b),
31 Texas Probate Code, revised in this chapter as
32 Sections 1163.001 and 1163.002, clarify that the
33 guardian of the estate has the duty to file the annual
34 account. The revised law is drafted accordingly.

35 Revised Law

36 Sec. 1163.052. CORRECTION AND APPROVAL OF ANNUAL ACCOUNT.

37 (a) If an annual account is found to be incorrect, the account
38 shall be corrected.

39 (b) The court by order shall approve an annual account that
40 is corrected to the satisfaction of the court and shall act with
41 respect to unpaid claims in accordance with Sections 1163.053 and
42 1163.054. (Tex. Prob. Code, Sec. 742(f) (part).)

Source Law

[Sec. 742. (a) The rules in this section govern the handling of annual accounts.]

(f) If an account is found to be incorrect, it shall be corrected. When corrected to the satisfaction of the court, the account shall be approved by a court order, and the court shall act with respect to unpaid claims, as follows:

• • • •

Revised Law

Sec. 1163.053. ORDER FOR PAYMENT OF CLAIMS IN FULL. After approval of an annual account as provided by Section 1163.052, if it appears to the court from the exhibit or other evidence that the estate is wholly solvent and that the guardian has sufficient funds to pay every claim against the estate, the court shall order immediate payment of all claims allowed and approved or established by judgment. (Tex. Prob. Code, Sec. 742(f) (part).)

Source Law

[Sec. 742. (a) The rules in this section govern the handling of annual accounts.

(f) If an account is found to be incorrect, it shall be corrected. When corrected to the satisfaction of the court, the account shall be approved by a court order, and the court shall act with respect to unpaid claims, as follows:]

(1) if it appears from the exhibit, or from other evidence, that the estate is wholly solvent, and that the guardian has sufficient funds for the payment of every claim against the estate, the court shall order immediate payment made of all claims allowed and approved or established by judgment; and

• • • •

Revised Law

Sec. 1163.054. ORDER FOR PRO RATA PAYMENT OF CLAIMS. After approval of an annual account as provided by Section 1163.052, if it appears to the court from the account or other evidence that the funds on hand are not sufficient to pay all claims against the estate or if the estate is insolvent and the guardian has any funds on hand, the court shall order the funds to be applied:

(1) first to the payment of any unpaid claims having a preference in the order of their priority; and

(2) then to the pro rata payment of the other claims allowed and approved or established by final judgment, considering

1 also:

2 (A) claims that were presented not later than the
3 first anniversary of the date letters of guardianship were granted;
4 and

5 (B) claims that are in litigation or on which a
6 lawsuit may be filed. (Tex. Prob. Code, Sec. 742(f) (part).)

7 Source Law

8 [Sec. 742. (a) The rules in this section govern
9 the handling of annual accounts.

10 (f) If an account is found to be incorrect, it
11 shall be corrected. When corrected to the
12 satisfaction of the court, the account shall be
13 approved by a court order, and the court shall act with
14 respect to unpaid claims, as follows:]

15 . . .
16 (2) if it appears from the account, or from
17 other evidence, that the funds on hand are not
18 sufficient for the payment of all the claims, or if the
19 estate is insolvent and the guardian has any funds on
20 hand, the court shall order the funds to be applied to
21 the payment of all claims having a preference in the
22 order of their priority if any claim is still unpaid,
23 and then to the payment pro rata of the other claims
24 allowed and approved or established by final judgment,
25 taking into consideration also the claims that were
26 presented not later than 12 months after the date of
27 the granting of letters of guardianship and those
28 claims that are in suit or on which suit may yet be
29 instituted.

30 [Sections 1163.055-1163.100 reserved for expansion]

31 SUBCHAPTER C. ANNUAL REPORT BY GUARDIAN OF THE PERSON

32 Revised Law

33 Sec. 1163.101. ANNUAL REPORT REQUIRED. (a) Once each year
34 for the duration of the guardianship, a guardian of the person shall
35 file with the court a report that contains the information required
36 by this section.

37 (b) The guardian of the person shall file a sworn, written
38 report that shows each receipt and disbursement for:

- 39 (1) the support and maintenance of the ward;
40 (2) when necessary, the education of the ward; and
41 (3) when authorized by court order, the support and
42 maintenance of the ward's dependents.

43 (c) The guardian of the person shall file a sworn affidavit
44 that contains:

1 (1) the guardian's current name, address, and
2 telephone number;

3 (2) the ward's date of birth and current name, address,
4 telephone number, and age;

5 (3) a description of the type of home in which the ward
6 resides, which shall be described as:

7 (A) the ward's own home;

8 (B) a nursing home;

9 (C) a guardian's home;

10 (D) a foster home;

11 (E) a boarding home;

12 (F) a relative's home, in which case the
13 description must specify the relative's relationship to the ward;

14 (G) a hospital or medical facility; or

15 (H) another type of residence;

16 (4) statements indicating:

17 (A) the length of time the ward has resided in the
18 present home;

19 (B) the reason for a change in the ward's
20 residence, if a change in the ward's residence has occurred in the
21 past year;

22 (C) the date the guardian most recently saw the
23 ward;

24 (D) how frequently the guardian has seen the ward
25 in the past year;

26 (E) whether the guardian has possession or
27 control of the ward's estate;

28 (F) whether the ward's mental health has
29 improved, deteriorated, or remained unchanged during the past year,
30 including a description of the change if a change has occurred;

31 (G) whether the ward's physical health has
32 improved, deteriorated, or remained unchanged during the past year,
33 including a description of the change if a change has occurred;

34 (H) whether the ward has regular medical care;

1 and

2 (I) the ward's treatment or evaluation by any of
3 the following persons during the past year, including the person's
4 name and a description of the treatment:

5 (i) a physician;

6 (ii) a psychiatrist, psychologist, or other
7 mental health care provider;

8 (iii) a dentist;

9 (iv) a social or other caseworker; or

10 (v) any other individual who provided
11 treatment;

12 (5) a description of the ward's activities during the
13 past year, including recreational, educational, social, and
14 occupational activities, or a statement that no activities were
15 available or that the ward was unable or refused to participate in
16 activities;

17 (6) the guardian's evaluation of:

18 (A) the ward's living arrangements as excellent,
19 average, or below average, including an explanation if the
20 conditions are below average;

21 (B) whether the ward is content or unhappy with
22 the ward's living arrangements; and

23 (C) unmet needs of the ward;

24 (7) a statement indicating whether the guardian's
25 power should be increased, decreased, or unaltered, including an
26 explanation if a change is recommended;

27 (8) a statement indicating that the guardian has paid
28 the bond premium for the next reporting period; and

29 (9) any additional information the guardian desires to
30 share with the court regarding the ward, including:

31 (A) whether the guardian has filed for emergency
32 detention of the ward under Subchapter A, Chapter 573, Health and
33 Safety Code; and

34 (B) if applicable, the number of times the

guardian has filed for emergency detention and the dates of the applications for emergency detention. (Tex. Prob. Code, Secs. 743(a), (b), (g) (part).)

Source Law

Sec. 743. (a) The guardian of the person of a ward shall return to the court a sworn, written report showing each item of receipts and disbursements for the support and maintenance of the ward, the education of the ward when necessary, and support and maintenance of the ward's dependents, when authorized by order of court.

(b) The guardian of the person, whether or not there is a separate guardian of the estate, shall submit to the court an annual report by sworn affidavit that contains the following information:

(1) the guardian's current name, address, and phone number;

(2) the ward's current:

(A) name, address, and phone number;

and

(B) age and date of birth;

(3) the type of home in which the ward resides, described as the ward's own; a nursing, guardian's, foster, or boarding home; a relative's home, and the ward's relationship to the relative; a hospital or medical facility; or other type of residence;

(4) the length of time the ward has resided in the present home and, if there has been a change in the ward's residence in the past year, the reason for the change;

(5) the date the guardian most recently saw the ward, and how frequently the guardian has seen the ward in the past year;

(6) a statement indicating whether or not the guardian has possession or control of the ward's estate;

(7) the following statements concerning the ward's health during the past year:

(A) whether the ward's mental health has improved, deteriorated, or remained unchanged, and a description if there has been a change; and

(B) whether the ward's physical health has improved, deteriorated, or remained unchanged, and a description if there has been a change;

(8) a statement concerning whether or not the ward has regular medical care, and the ward's treatment or evaluation by any of the following persons during the last year, including the name of that person, and the treatment involved:

(A) a physician;

(B) a psychiatrist, psychologist, or other mental health care provider;

(C) a dentist;

(D) a social or other caseworker; or

(E) another individual who provided treatment;

(9) a description of the ward's activities during the past year, including recreational, educational, social, and occupational activities, or if no activities are available or if the ward is unable or has refused to participate in them, a statement to that effect;

1 (10) the guardian's evaluation of the
2 ward's living arrangements as excellent, average, or
3 below average, including an explanation if the
4 conditions are below average;

5 (11) the guardian's evaluation of whether
6 the ward is content or unhappy with the ward's living
7 arrangements;

8 (12) the guardian's evaluation of unmet
9 needs of the ward;

10 (13) a statement of whether or not the
11 guardian's power should be increased, decreased, or
12 unaltered, including an explanation if a change is
13 recommended;

14 (14) a statement that the guardian has
15 paid the bond premium for the next reporting period;
16 and

17 (15) any additional information the
18 guardian desires to share with the court regarding the
19 ward, including whether the guardian has filed for
20 emergency detention of the ward under Subchapter A,
21 Chapter 573, Health and Safety Code, and if
22 applicable, the number of times the guardian has filed
23 and the dates of the applications.

24 (g) Once each year for the duration of the
25 guardianship, a guardian of the person shall file the
26 report that contains the information required by
27 Subsections (a) and (b) of this section. . . .

28 Revisor's Note

29 Section 743(b), Texas Probate Code, provides that
30 the guardian of the person, "whether or not there is a
31 separate guardian of the estate," shall submit an
32 annual report containing certain specified
33 information. The revised law omits the quoted language
34 as unnecessary. When enacted in 1993, Section 743(a),
35 Texas Probate Code, required the guardian of the
36 person, "when there is a separate guardian of the
37 estate," to return to the court a sworn account showing
38 each item of receipts and disbursements for certain of
39 the ward's expenses, while Section 743(b) required the
40 guardian of the person, "whether or not there is a
41 separate guardian of the estate," to submit an annual
42 report containing certain specified information. In
43 1995, Section 743(a) was amended to remove the
44 language limiting the applicability of the subsection
45 to situations when there is a separate guardian of the
46 estate, with the result being that the reports
47 required under Sections 743(a) and (b) are required of

1 all guardians of the person. Therefore, the language
2 specifying that Section 743(b) applies whether or not
3 there is a separate guardian of the estate is no longer
4 necessary to distinguish the applicability of Section
5 743(b) from the applicability of Section 743(a).
6 Furthermore, the revision of Section 743(b) applies to
7 all guardians of the person by its own terms,
8 regardless of whether there is a separate guardian of
9 the estate.

10 Revised Law

11 Sec. 1163.102. REPORTING PERIOD. (a) Except as provided
12 under Subsection (b), an annual report required by Section 1163.101
13 must cover a 12-month reporting period that begins on the date or
14 the anniversary of the date the guardian of the person qualifies to
15 serve.

16 (b) The court may change a reporting period for purposes of
17 this subchapter but may not extend a reporting period so that it
18 covers more than 12 months.

19 (c) Each report is due not later than the 60th day after the
20 date the reporting period ends. (Tex. Prob. Code, Secs. 743(g)
21 (part), (h), (i).)

22 Source Law

23 (g) [Once each year for the duration of the
24 guardianship, a guardian of the person shall file the
25 report that contains the information required by
26 Subsections (a) and (b) of this section.] Except as
27 provided by Subsection (h) of this section, the report
28 must cover a 12-month reporting period that begins on
29 the date the guardian qualifies to serve.

30 (h) The court may change a reporting period for
31 purposes of this section but may not extend a reporting
32 period so that it covers more than 12 months.

33 (i) Each report is due not later than the 60th
34 day after the date on which the reporting period ends.

35 Revisor's Note

36 Section 743(g), Texas Probate Code, provides that
37 an annual report of a guardian of the person must cover
38 a 12-month reporting period that begins on the date the
39 guardian qualifies to serve. The revised law
40 specifies that the report must cover a period that

1 begins on the date the guardian qualifies to serve or
2 on the anniversary of that date because the report is
3 required each year, but only the initial reporting
4 period will begin on the actual date the guardian
5 qualifies to serve.

6 Revised Law

7 Sec. 1163.103. REPORT IN CASE OF DECEASED WARD. If the ward
8 is deceased, the guardian of the person shall provide the court with
9 the date and place of death, if known, instead of the information
10 about the ward otherwise required to be provided in the annual
11 report. (Tex. Prob. Code, Sec. 743(c).)

12 Source Law

13 (c) If the ward is deceased, the guardian shall
14 provide the court with the date and place of death, if
15 known, in lieu of the information about the ward
16 otherwise required to be provided in the annual
17 report.

18 Revised Law

19 Sec. 1163.104. APPROVAL OF REPORT. (a) If the judge is
20 satisfied that the facts stated in the report are true, the court
21 shall approve the report.

22 (b) Unless the judge is satisfied that the facts stated in
23 the report are true, the judge shall issue orders necessary for the
24 ward's best interests.

25 (c) The court on the court's own motion may waive the costs
26 and fees related to the filing of a report approved under Subsection
27 (a). (Tex. Prob. Code, Secs. 743(d), (e), (f).)

28 Source Law

29 (d) Unless the judge is satisfied that the facts
30 stated are true, he shall issue orders as are necessary
31 for the best interests of the ward.

32 (e) If the judge is satisfied that the facts
33 stated in the report are true, the court shall approve
34 the report.

35 (f) The court on the court's own motion may waive
36 the costs and fees related to the filing of a report
37 approved under Subsection (e) of this section.

38 Revised Law

39 Sec. 1163.105. ATTORNEY NOT REQUIRED. A guardian of the
40 person may complete and file the report required under this

1 subchapter without the assistance of an attorney. (Tex. Prob. Code,
2 Sec. 743(j).)

3 Source Law

4 (j) A guardian of the person may complete and
5 file the report required under this section without
6 the assistance of an attorney.

7 [Sections 1163.106-1163.150 reserved for expansion]

8 SUBCHAPTER D. PENALTIES

9 Revised Law

10 Sec. 1163.151. PENALTY FOR FAILURE TO FILE REQUIRED
11 ACCOUNT, EXHIBIT, OR REPORT. (a) If a guardian does not file an
12 account, an exhibit, a report of the guardian of the person, or
13 another report required by this title, any person interested in the
14 estate, on written complaint filed with the court clerk, or the
15 court on the court's own motion, may have the guardian cited to
16 appear and show cause why the guardian should not file the account,
17 exhibit, or report.

18 (b) On hearing, the court may:

19 (1) order the guardian to file the account, exhibit,
20 or report; and

21 (2) unless good cause is shown for the failure to file:

22 (A) revoke the guardian's letters of
23 guardianship;

24 (B) fine the guardian in an amount not to exceed
25 \$1,000; or

26 (C) revoke the guardian's letters of
27 guardianship and fine the guardian in an amount not to exceed
28 \$1,000. (Tex. Prob. Code, Sec. 744.)

29 Source Law

30 Sec. 744. If a guardian fails to file any
31 accounting, exhibit, report of the guardian of the
32 person, or other report required by this chapter, any
33 person interested in the estate may, on written
34 complaint filed with the clerk of the court, or the
35 court on its own motion, may cause the guardian to be
36 cited to appear and show cause why the guardian should
37 not file the account, exhibit, or report; and, on
38 hearing, the court may order the guardian to file the
39 account, exhibit, or report, and, unless good cause is
40 shown for the failure to file the account, exhibit, or
41 report, the court may fine the guardian an amount not

to exceed \$1,000, revoke the letters of the guardian,
or fine the guardian an amount not to exceed \$1,000 and
revoke the letters of the guardian.

CHAPTER 1164. LIABILITY OF GUARDIAN OR GUARDIANSHIP PROGRAM

Sec. 1164.001. LIABILITY OF GUARDIAN 493

Sec. 1164.002. IMMUNITY OF GUARDIANSHIP PROGRAM 493

CHAPTER 1164. LIABILITY OF GUARDIAN OR GUARDIANSHIP PROGRAM

Revised Law

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.)

Source Law

Sec. 673. A person is not liable to a third
person solely because the person has been appointed
guardian of a ward under this chapter.

Revised Law

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.)

Source Law

Sec. 674. 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:

- (1) was wilfully wrongful;
- (2) was taken or made with conscious
indifference or reckless disregard to the safety of
the incapacitated person or another;
- (3) was taken or made in bad faith or with
malice; or
- (4) was grossly negligent.

1	<u>Revisor's Note</u>	
2	Section 674(2), Texas Probate Code, refers to	
3	"the incapacitated person." The revised law	
4	substitutes "the ward" for "the incapacitated person"	
5	because it is clear from the context of Section 674	
6	that "the incapacitated person" is the previously	
7	referenced ward to whom the guardianship services are	
8	provided.	
9	[Chapters 1165-1200 reserved for expansion]	
10	SUBTITLE F. EVALUATION, MODIFICATION, OR TERMINATION OF	
11	GUARDIANSHIP	
12	CHAPTER 1201. EVALUATION OF GUARDIANSHIP	
13	SUBCHAPTER A. REVIEW OF GUARDIANSHIP	
14	Sec. 1201.001.	DETERMINING GUARDIAN'S PERFORMANCE OF
15		DUTIES 494
16	Sec. 1201.002.	ANNUAL EXAMINATION OF GUARDIANSHIP;
17		BOND OF GUARDIAN 495
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19	Sec. 1201.004.	IDENTIFYING INFORMATION 496
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 497
24	Sec. 1201.052.	ANNUAL DETERMINATION 497
25	Sec. 1201.053.	METHOD OF DETERMINATION 497
26	Sec. 1201.054.	FORM OF DETERMINATION 498
27	CHAPTER 1201. EVALUATION OF GUARDIANSHIP	
28	SUBCHAPTER A. REVIEW OF GUARDIANSHIP	
29	<u>Revised Law</u>	
30	Sec. 1201.001.	DETERMINING GUARDIAN'S PERFORMANCE OF
31	DUTIES.	The court shall use reasonable diligence to determine
32	whether a guardian is performing all of the duties required of the	
33	guardian that relate to the guardian's ward. (Tex. Prob. Code, Sec.	
34	671(a).)	

1 Source Law

2 Sec. 671. (a) The court shall use reasonable
3 diligence to determine whether a guardian is
4 performing all of the duties required of the guardian
5 that pertain to the guardian's ward.

6 Revised Law

7 Sec. 1201.002. ANNUAL EXAMINATION OF GUARDIANSHIP; BOND OF
8 GUARDIAN. (a) At least annually, the judge shall examine the
9 well-being of each ward of the court and the solvency of the bond of
10 the guardian of the ward's estate.

11 (b) If after examining the solvency of a guardian's bond as
12 provided by Subsection (a) the judge determines that the guardian's
13 bond is not sufficient to protect the ward or the ward's estate, the
14 judge shall require the guardian to execute a new bond.

15 (c) The judge shall notify the guardian and the sureties on
16 the guardian's bond as provided by law. (Tex. Prob. Code, Secs.
17 671(b), (c), (d) (part).)

18 Source Law

19 (b) The judge, at least annually, shall examine
20 the well-being of each ward of the court and the
21 solvency of the bonds of the guardians of the estates.

22 (c) If after examining the solvency of a
23 guardian's bond under this section a judge determines
24 that the guardian's bond is not sufficient to protect
25 the ward or the ward's estate, the judge shall require
26 the guardian to execute a new bond.

27 (d) The judge shall notify the guardian and the
28 sureties on the bond as provided by law. . . .

29 Revisor's Note

30 Section 671(c), Texas Probate Code, refers to the
31 judge's examination of the solvency of a guardian's
32 bond "under this section," meaning Section 671, Texas
33 Probate Code. The requirement that the judge examine
34 the solvency of a guardian's bond is found in Section
35 671(b), Texas Probate Code, revised as Subsection (a)
36 of this section. Therefore, the revised law
37 substitutes a reference to "Subsection (a)" for the
38 quoted language.

39 Revised Law

40 Sec. 1201.003. JUDGE'S LIABILITY. A judge is liable on the

1 judge's bond to those damaged if damage or loss results to a
2 guardianship or ward because of the gross neglect of the judge to
3 use reasonable diligence in the performance of the judge's duty
4 under this subchapter. (Tex. Prob. Code, Sec. 671(d) (part).)

5 Source Law

6 (d) . . . If damage or loss results to a
7 guardianship or ward because of gross neglect of the
8 judge to use reasonable diligence in the performance
9 of the judge's duty under this section, the judge shall
10 be liable on the judge's bond to those damaged by the
11 judge's neglect.

12 Revised Law

13 Sec. 1201.004. IDENTIFYING INFORMATION. (a) The court may
14 request an applicant or court-appointed fiduciary to produce other
15 information identifying an applicant, ward, or guardian, including
16 a social security number, in addition to identifying information
17 the applicant or fiduciary is required to produce under this title.

18 (b) The court shall maintain any information required under
19 this section, and the information may not be filed with the clerk.
20 (Tex. Prob. Code, Sec. 671(e).)

21 Source Law

22 (e) The court may request an applicant or
23 court-appointed fiduciary to produce other
24 information identifying an applicant, ward, or
25 guardian, including social security numbers, in
26 addition to identifying information the applicant or
27 fiduciary is required to produce under this code. The
28 court shall maintain the information required under
29 this subsection, and the information may not be filed
30 with the clerk.

31 Revisor's Note

32 Section 671(e), Texas Probate Code, refers to
33 certain information required from applicants and
34 court-appointed fiduciaries under "this code,"
35 meaning the Texas Probate Code. The revised law
36 substitutes a reference to "this title" for the
37 reference to "this code" because the provisions of the
38 Texas Probate Code that relate to information required
39 in a guardianship proceeding are revised in Title 3 of
40 this code, and this chapter is included in that title.

41 [Sections 1201.005-1201.050 reserved for expansion]

1 SUBCHAPTER B. ANNUAL DETERMINATION TO CONTINUE, MODIFY, OR
2 TERMINATE GUARDIANSHIP

3 Revised Law

4 Sec. 1201.051. APPLICABILITY. This subchapter does not
5 apply to a guardianship that is created only because it is necessary
6 for a person to have a guardian appointed to receive funds from a
7 governmental source. (Tex. Prob. Code, Sec. 672(e).)

8 Source Law

9 (e) This section does not apply to a
10 guardianship that is created only because it is
11 necessary for a person to have a guardian appointed to
12 receive funds from a governmental source.

13 Revised Law

14 Sec. 1201.052. ANNUAL DETERMINATION. To determine whether
15 a guardianship should be continued, modified, or terminated, the
16 court in which the guardianship proceeding is pending:

17 (1) shall review annually each guardianship in which
18 the application to create the guardianship was filed after
19 September 1, 1993; and

20 (2) may review annually any other guardianship. (Tex.
21 Prob. Code, Sec. 672(a).)

22 Source Law

23 Sec. 672. (a) A court in which a guardianship
24 proceeding is pending shall review annually each
25 guardianship in which the application to create the
26 guardianship was filed after September 1, 1993, and
27 may review annually any other guardianship to
28 determine whether the guardianship should be
29 continued, modified, or terminated.

30 Revised Law

31 Sec. 1201.053. METHOD OF DETERMINATION. (a) In reviewing a
32 guardianship under Section 1201.052, a statutory probate court may:

33 (1) review any report prepared by:

34 (A) a court investigator under Section 1054.153
35 or 1202.054;

36 (B) a guardian ad litem under Section 1202.054;
37 or

38 (C) a court visitor under Section 1054.104;

39 (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).)

Source Law

(b) In reviewing a guardianship as provided by Subsection (a) of this section, a statutory probate court may:

(1) review any report prepared by a court investigator under Section 648A or 694A(c) of this code;

(2) review any report prepared by a guardian ad litem under Section 694A(c) of this code;

(3) review any report prepared by a court visitor under Section 648 of this code;

(4) conduct a hearing; or

(5) review an annual account prepared under Section 741 of this code or a report prepared under Section 743 of this code.

(c) In reviewing a guardianship as provided by Subsection (a) of this section, a court that is not a statutory probate court may use any appropriate method determined by the court according to the court's caseload and the resources available to the court.

Revised Law

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).)

Source Law

(d) A determination under this section must be in writing and filed with the clerk.

CHAPTER 1202. MODIFICATION OR TERMINATION OF GUARDIANSHIP

SUBCHAPTER A. TERMINATION AND SETTLEMENT OF GUARDIANSHIP

Sec. 1202.001. TERM OF GUARDIAN OR GUARDIANSHIP 499

Sec. 1202.002. TERMINATION OF GUARDIANSHIP IF PARENT
IS NO LONGER INCAPACITATED 501

[Sections 1202.003-1202.050 reserved for expansion]

SUBCHAPTER B. APPLICATION FOR COMPLETE RESTORATION OF WARD'S

CAPACITY OR MODIFICATION OF GUARDIANSHIP

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15		[Sections 1202.104–1202.150 reserved for expansion]	
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18		GUARDIANSHIP	
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30	CHAPTER 1202.	MODIFICATION OR TERMINATION OF GUARDIANSHIP	
31	SUBCHAPTER A.	TERMINATION AND SETTLEMENT OF GUARDIANSHIP	
32		<u>Revised Law</u>	
33	Sec. 1202.001.	TERM OF GUARDIAN OR GUARDIANSHIP. (a)	
34		Unless otherwise discharged as provided by law, a guardian remains	

1 in office until the estate is closed.

2 (b) A guardianship shall be settled and closed when the
3 ward:

4 (1) dies and, if the ward was married, the ward's
5 spouse qualifies as survivor in community;

6 (2) is found by the court to have full capacity to care
7 for himself or herself and to manage the ward's property;

8 (3) is no longer a minor; or

9 (4) no longer must have a guardian appointed to
10 receive funds due the ward from any governmental source.

11 (c) An order appointing a guardian or a successor guardian
12 may specify a period of not more than one year during which a
13 petition for adjudication that the ward no longer requires the
14 guardianship may not be filed without special leave.

15 (d) A request for an order under this section may be made by
16 informal letter to the court. A person who knowingly interferes
17 with the transmission of the request to the court may be adjudged
18 guilty of contempt of court.

19 (e) If a nonresident guardian of a nonresident ward
20 qualifies as guardian under this title, any resident guardian's
21 guardianship may be terminated. (Tex. Prob. Code, Sec. 694.)

22 Source Law

23 Sec. 694. (a) Unless otherwise discharged as
24 provided by law, a guardian remains in office until the
25 estate is closed.

26 (b) The guardianship shall be settled and closed
27 when the incapacitated person:

28 (1) dies and, if the person was married,
29 the person's spouse qualifies as survivor in
30 community;

31 (2) is found by the court to have full
32 capacity to care for himself or herself and to manage
33 the person's property;

34 (3) is no longer a minor; or

35 (4) no longer must have a guardian
36 appointed to receive funds due the person from any
37 governmental source.

38 (c) An order appointing a guardian or a
39 successor guardian may specify a period of not more
40 than one year during which a petition for adjudication
41 that the incapacitated person no longer requires the
42 guardianship may not be filed without special leave.

43 (d) A request for an order under this section
44 may be made by informal letter to the court. A person
45 who knowingly interferes with the transmission of the
46 request to the court may be adjudged guilty of contempt

1 of court.

2 (e) If a nonresident guardian of a nonresident
3 ward qualifies as guardian under this chapter, the
4 guardianship of any resident guardian may be
5 terminated.

6 Revisor's Note

7 Sections 694(b) and (c), Texas Probate Code,
8 refer to "the incapacitated person" for whom a
9 guardian or successor guardian has been appointed.
10 Section 601(31), Texas Probate Code, revised in this
11 title as Section 1002.030, defines "ward" as a person
12 for whom a guardian has been appointed. The revised
13 law substitutes "the ward" for "the incapacitated
14 person" for consistency of terminology in this title.

15 Revised Law

16 Sec. 1202.002. TERMINATION OF GUARDIANSHIP IF PARENT IS NO
17 LONGER INCAPACITATED. (a) The powers of a person appointed to
18 serve as the designated guardian of the person or estate, or both,
19 of a minor child solely because of the incapacity of the minor's
20 surviving parent and in accordance with Section 1104.053 and
21 Subchapter D, Chapter 1104, terminate when a probate court enters
22 an order finding that the surviving parent is no longer an
23 incapacitated person.

24 (b) The powers of a person appointed to serve as the
25 designated guardian of the person or estate, or both, of an adult
26 individual solely because of the incapacity of the individual's
27 surviving parent and in accordance with Section 1104.103 and
28 Subchapter D, Chapter 1104, terminate when a probate court enters
29 an order finding that the surviving parent is no longer an
30 incapacitated person and reappointing the surviving parent as the
31 individual's guardian. (Tex. Prob. Code, Secs. 676(g), 677(e).)

32 Source Law

33 [Sec. 676]

34 (g) The powers of a person appointed to serve as
35 the designated guardian of the person or estate, or
36 both, of a minor child solely because of the incapacity
37 of the minor's surviving parent and in accordance with
38 this section and Section 677A of this code terminate
39 when a probate court enters an order finding that the
40 surviving parent is no longer an incapacitated person.

1 [Sec. 677]

2 (e) The powers of a person appointed to serve as
3 the designated guardian of the person or estate, or
4 both, of an adult individual solely because of the
5 incapacity of the individual's surviving parent and in
6 accordance with this section and Section 677A of this
7 code terminate when a probate court enters an order
8 finding that the surviving parent is no longer an
9 incapacitated person and reappointing the surviving
10 parent as the individual's guardian.

11 [Sections 1202.003-1202.050 reserved for expansion]

12 SUBCHAPTER B. APPLICATION FOR COMPLETE RESTORATION OF WARD'S

13 CAPACITY OR MODIFICATION OF GUARDIANSHIP

14 Revised Law

15 Sec. 1202.051. APPLICATION AUTHORIZED. A ward or any
16 person interested in the ward's welfare may file a written
17 application with the court for an order:

18 (1) finding that the ward is no longer an
19 incapacitated person and ordering the settlement and closing of the
20 guardianship;

21 (2) finding that the ward lacks the capacity to do some
22 or all of the tasks necessary to provide food, clothing, or shelter
23 for himself or herself, to care for the ward's own physical health,
24 or to manage the ward's own financial affairs and granting
25 additional powers or duties to the guardian; or

26 (3) finding that the ward has the capacity to do some,
27 but not all, of the tasks necessary to provide food, clothing, or
28 shelter for himself or herself, to care for the ward's own physical
29 health, or to manage the ward's own financial affairs and:

30 (A) limiting the guardian's powers or duties; and

31 (B) permitting the ward to care for himself or
32 herself or to manage the ward's own financial affairs commensurate
33 with the ward's ability. (Tex. Prob. Code, Sec. 694A(a).)

34 Source Law

35 Sec. 694A. (a) A ward or any person interested
36 in the ward's welfare may file a written application
37 with the court for an order:

38 (1) finding that the ward is no longer an
39 incapacitated person and ordering the settlement and
40 closing of the guardianship;

41 (2) finding that the ward lacks the
42 capacity to do some or all of the tasks necessary to
43 provide food, clothing, or shelter for himself or
44 herself, to care for the ward's own physical health, or

1 to manage the ward's own financial affairs and granting
2 additional powers or duties to the guardian; or

3 (3) finding that the ward has the capacity
4 to do some, but not all, of the tasks necessary to
5 provide food, clothing, or shelter for himself or
6 herself, to care for the ward's own physical health, or
7 to manage the ward's own financial affairs and:

8 (A) limiting the powers or duties of
9 the guardian; and

10 (B) permitting the ward to care for
11 himself or herself or to manage the ward's own
12 financial affairs commensurate with the ward's
13 ability.

14 Revised Law

15 Sec. 1202.052. CONTENTS OF APPLICATION. An application
16 filed under Section 1202.051 must be sworn to by the applicant and
17 must state:

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

19 (2) the name and address of any person serving as
20 guardian of the person of the ward on the date the application is
21 filed;

22 (3) the name and address of any person serving as
23 guardian of the estate of the ward on the date the application is
24 filed;

25 (4) the nature and description of the ward's
26 guardianship;

27 (5) the specific areas of protection and assistance
28 and any limitation of rights that exist;

29 (6) whether the relief being sought is:

30 (A) a restoration of the ward's capacity because
31 the ward is no longer an incapacitated person;

32 (B) the granting of additional powers or duties
33 to the guardian; or

34 (C) the limitation of powers granted to or duties
35 performed by the guardian;

36 (7) if the relief being sought under the application
37 is described by Subdivision (6)(B) or (C):

38 (A) the nature and degree of the ward's
39 incapacity;

40 (B) the specific areas of protection and
41 assistance to be provided to the ward and requested to be included

1 in the court's order; and

2 (C) any limitation of the ward's rights requested
3 to be included in the court's order;

4 (8) the approximate value and description of the
5 ward's property, including any compensation, pension, insurance,
6 or allowance to which the ward is or may be entitled; and

7 (9) if the ward is 60 years of age or older, the names
8 and addresses, to the best of the applicant's knowledge, of the
9 ward's spouse, siblings, and children or, if there is no known
10 spouse, sibling, or child, the names and addresses of the ward's
11 next of kin. (Tex. Prob. Code, Sec. 694B.)

12 Source Law

13 Sec. 694B. An application filed under Section
14 694A of this code must be sworn to by the applicant and
15 must:

16 (1) contain the name, sex, date of birth,
17 and address of the ward;

18 (2) contain the name and address of any
19 person serving as guardian of the person of the ward on
20 the date the application is filed;

21 (3) contain the name and address of any
22 person serving as guardian of the estate of the ward on
23 the date the application is filed;

24 (4) state the nature and description of
25 the ward's guardianship;

26 (5) state the specific areas of protection
27 and assistance and any limitation of rights that
28 exist;

29 (6) state whether the relief being sought
30 is:

31 (A) a restoration of the ward's
32 capacity because the ward is no longer an
33 incapacitated person;

34 (B) the granting of additional powers
35 or duties to the guardian; or

36 (C) the limitation of powers granted
37 to or duties performed by the guardian;

38 (7) if the relief being sought under the
39 application is described by Subdivision (6)(B) or (C)
40 of this section, state:

41 (A) the nature and degree of the
42 ward's incapacity;

43 (B) the specific areas of protection
44 and assistance to be provided to the ward and requested
45 to be included in the court's order; and

46 (C) any limitation of the ward's
47 rights requested to be included in the court's order;

48 (8) state the approximate value and
49 description of the ward's property, including any
50 compensation, pension, insurance, or allowance to
51 which the ward is or may be entitled; and

52 (9) if the ward is 60 years of age or
53 older, contain the names and addresses, to the best of
54 the applicant's knowledge, of the ward's spouse,
55 siblings, and children or, if there is no known spouse,
56 sibling, or child, the names and addresses of the

ward's next of kin.

Revisor's Note

Section 694B, Texas Probate Code, refers to an application filed under Section 694A, Texas Probate Code. The portion of Section 694A that relates to an application for an order terminating or modifying a guardianship is revised in this chapter as Section 1202.051. Throughout this chapter, the revised law is drafted accordingly.

Revised Law

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).)

Source Law

(d) When an application is filed under this section, citation shall be served on the ward's guardian and on the ward if the ward is not the applicant.

Revised Law

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 Source Law

8 (b) A ward may make a request for an order under
9 this section by informal letter to the court. A person
10 who knowingly interferes with the transmission of the
11 request to the court may be adjudged guilty of contempt
12 of court.

13 (c) On receipt of an informal letter under
14 Subsection (b) of this section, the court shall
15 appoint the court investigator or a guardian ad litem
16 to investigate the circumstances of the ward,
17 including any circumstances alleged in the informal
18 letter, to determine whether the ward is no longer an
19 incapacitated person or whether a modification of the
20 guardianship is necessary. The court investigator or
21 guardian ad litem shall file with the court a report of
22 the investigation's findings and conclusions and, if
23 the court investigator or the guardian ad litem
24 determines that it is in the best interest of the ward
25 to terminate or modify the guardianship, the court
26 investigator or guardian ad litem, as appropriate,
27 shall file an application under Subsection (a) of this
28 section on the ward's behalf. A guardian ad litem
29 appointed under this subsection may also be appointed
30 by the court to serve as attorney ad litem under
31 Section 694C of this code.

32 Revised Law

33 Sec. 1202.055. RESTRICTION ON SUBSEQUENT APPLICATION
34 REGARDING CAPACITY OR MODIFICATION. A person may not reapply for
35 complete restoration of a ward's capacity or modification of a
36 ward's guardianship before the first anniversary of the date of the
37 hearing on the last preceding application, except as otherwise
38 provided by the court on good cause shown by the applicant. (Tex.
39 Prob. Code, Sec. 694A(e).)

40 Source Law

41 (e) Except as otherwise provided by the court,
42 on good cause shown by the applicant, a person may not
43 reapply for complete restoration of a ward's capacity
44 or modification of a ward's guardianship before the
45 first anniversary of the date of the hearing on the
46 last preceding application.

47 [Sections 1202.056-1202.100 reserved for expansion]

1 SUBCHAPTER C. REPRESENTATION OF WARD IN PROCEEDING FOR COMPLETE
2 RESTORATION OF WARD'S CAPACITY OR MODIFICATION OF GUARDIANSHIP

3 Revised Law

4 Sec. 1202.101. APPOINTMENT OF ATTORNEY AD LITEM. The court
5 shall appoint an attorney ad litem to represent a ward in a
6 proceeding for the complete restoration of the ward's capacity or
7 for the modification of the ward's guardianship. Unless otherwise
8 provided by the court, the attorney ad litem shall represent the
9 ward only for purposes of the restoration or modification
10 proceeding. (Tex. Prob. Code, Secs. 694C(a), (b).)

11 Source Law

12 Sec. 694C. (a) The court shall appoint an
13 attorney ad litem to represent a ward in a proceeding
14 for the complete restoration of the ward's capacity or
15 for the modification of the ward's guardianship.

16 (b) Unless otherwise provided by the court, an
17 attorney ad litem appointed under this section shall
18 represent the ward only for purposes of the
19 restoration or modification proceeding.

20 Revised Law

21 Sec. 1202.102. COMPENSATION FOR ATTORNEY AD LITEM AND
22 GUARDIAN AD LITEM. (a) An attorney ad litem appointed under
23 Section 1202.101 is entitled to reasonable compensation for
24 services in the amount set by the court to be taxed as costs in the
25 proceeding, regardless of whether the proceeding results in the
26 restoration of the ward's capacity or a modification of the ward's
27 guardianship.

28 (b) A guardian ad litem appointed in a proceeding involving
29 the complete restoration of a ward's capacity or modification of a
30 ward's guardianship is entitled to reasonable compensation, as
31 provided by Section 1054.055(a), regardless of whether the
32 proceeding results in the restoration of the ward's capacity or a
33 modification of the ward's guardianship. (Tex. Prob. Code, Secs.
34 694C(c), 694L.)

35 Source Law

36 [Sec. 694C]

37 (c) An attorney ad litem appointed under this
38 section is entitled to reasonable compensation for
39 services in the amount set by the court to be taxed as
40 costs in the proceeding, regardless of whether the

1 proceeding results in the restoration of the ward's
2 capacity or a modification of the ward's guardianship.

3 Sec. 694L. As provided by Section 645(b) of this
4 code, a guardian ad litem appointed in a proceeding
5 involving the complete restoration of a ward's
6 capacity or modification of a ward's guardianship is
7 entitled to reasonable compensation for services in
8 the amount set by the court to be taxed as costs in the
9 proceeding, regardless of whether the proceeding
10 results in the restoration of the ward's capacity or
11 modification of the ward's guardianship.

12 Revisor's Note

13 Section 694L, Texas Probate Code, provides that a
14 guardian ad litem appointed in a specified type of
15 proceeding is entitled to reasonable compensation as
16 provided by Section 645(b), Texas Probate Code, and
17 that the compensation shall be "for services in the
18 amount set by the court to be taxed as costs in the
19 proceeding." The revised law omits the quoted
20 language as unnecessary because it duplicates Section
21 645(b), Texas Probate Code, revised in this code as
22 Section 1054.055(a).

23 Revised Law

24 Sec. 1202.103. RETENTION AND COMPENSATION OF ATTORNEY FOR
25 WARD. (a) A ward may retain an attorney for a proceeding involving
26 the complete restoration of the ward's capacity or modification of
27 the ward's guardianship.

28 (b) The court may order that compensation for services
29 provided by an attorney retained under this section be paid from
30 funds in the ward's estate only if the court finds that the attorney
31 had a good faith belief that the ward had the capacity necessary to
32 retain the attorney's services. (Tex. Prob. Code, Sec. 694K.)

33 Source Law

34 Sec. 694K. (a) A ward may retain an attorney
35 for a proceeding involving the complete restoration of
36 the ward's capacity or modification of the ward's
37 guardianship.

38 (b) The court may order that compensation for
39 services provided by an attorney retained under this
40 section be paid from funds in the ward's estate only if
41 the court finds that the attorney had a good-faith
42 belief that the ward had the capacity necessary to
43 retain the attorney's services.

44 [Sections 1202.104-1202.150 reserved for expansion]

1 SUBCHAPTER D. HEARING, EVIDENCE, AND ORDERS IN PROCEEDING FOR
2 COMPLETE RESTORATION OF WARD'S CAPACITY OR MODIFICATION OF
3 GUARDIANSHIP

4 Revised Law

5 Sec. 1202.151. EVIDENCE AND BURDEN OF PROOF AT HEARING. (a)
6 At a hearing on an application filed under Section 1202.051, the
7 court shall consider only evidence regarding the ward's mental or
8 physical capacity at the time of the hearing that is relevant to the
9 complete restoration of the ward's capacity or modification of the
10 ward's guardianship.

11 (b) The party who filed the application has the burden of
12 proof at the hearing. (Tex. Prob. Code, Sec. 694D.)

13 Source Law

14 Sec. 694D. (a) At a hearing on an application
15 for complete restoration of a ward's capacity or
16 modification of a ward's guardianship, the court shall
17 consider only evidence regarding the ward's mental or
18 physical capacity at the time of the hearing that is
19 relevant to the restoration of capacity or
20 modification of the guardianship, as appropriate.

21 (b) The party who filed the application has the
22 burden of proof at the hearing.

23 Revised Law

24 Sec. 1202.152. PHYSICIAN'S LETTER OR CERTIFICATE REQUIRED.

25 (a) The court may not grant an order completely restoring a ward's
26 capacity or modifying a ward's guardianship under an application
27 filed under Section 1202.051 unless the applicant presents to the
28 court a written letter or certificate from a physician licensed in
29 this state that is dated:

30 (1) not earlier than the 120th day before the date the
31 application was filed; or

32 (2) after the date the application was filed but
33 before the date of the hearing.

34 (b) A letter or certificate presented under Subsection (a)
35 must:

36 (1) describe the nature and degree of incapacity,
37 including the medical history if reasonably available, or state
38 that, in the physician's opinion, the ward has the capacity to:

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

3 (B) care for the ward's own physical health; and

4 (C) manage the ward's financial affairs;

5 (2) provide a medical prognosis specifying the
6 estimated severity of any incapacity;

7 (3) state how or in what manner the ward's ability to
8 make or communicate responsible decisions concerning himself or
9 herself is affected by the ward's physical or mental health;

10 (4) state whether any current medication affects the
11 ward's demeanor or the ward's ability to participate fully in a
12 court proceeding;

13 (5) describe the precise physical and mental
14 conditions underlying a diagnosis of senility, if applicable; and

15 (6) include any other information required by the
16 court.

17 (c) If the court determines it is necessary, the court may
18 appoint the necessary physicians to examine the ward in the same
19 manner and to the same extent as a ward is examined by a physician
20 under Section 1101.103 or 1101.104. (Tex. Prob. Code, Sec. 694F.)

21 Source Law

22 Sec. 694F. (a) The court may not grant an order
23 completely restoring a ward's capacity or modifying a
24 ward's guardianship under an application filed under
25 Section 694A of this code unless, in addition to other
26 requirements prescribed by this code, the applicant
27 presents to the court a written letter or certificate
28 from a physician licensed in this state that is dated
29 not earlier than the 120th day before the date of the
30 filing of the application or dated after the date on
31 which the application was filed but before the date of
32 the hearing. The letter or certificate must:

33 (1) describe the nature and degree of
34 incapacity, including the medical history if
35 reasonably available, or state that, in the
36 physician's opinion, the ward has the capacity to
37 provide food, clothing, and shelter for himself or
38 herself, to care for the ward's own physical health,
39 and to manage the financial affairs of the ward;

40 (2) provide a medical prognosis specifying
41 the estimated severity of any incapacity;

42 (3) state how or in what manner the ward's
43 ability to make or communicate responsible decisions
44 concerning himself or herself is affected by the
45 person's physical or mental health;

46 (4) state whether any current medication
47 affects the demeanor of the ward or the ward's ability

1 to participate fully in a court proceeding;
2 (5) describe the precise physical and
3 mental conditions underlying a diagnosis of senility,
4 if applicable; and
5 (6) include any other information required
6 by the court.
7 (b) If the court determines it is necessary, the
8 court may appoint the necessary physicians to examine
9 the ward in the same manner and to the same extent as a
10 ward is examined by a physician under Section 687 of
11 this code.

12 Revisor's Note

13 Section 694F(a), Texas Probate Code, provides
14 that, for certain court orders to be granted, an
15 applicant under Section 694A, Texas Probate Code, must
16 meet specified requirements "in addition to other
17 requirements prescribed by this code," meaning the
18 Texas Probate Code. The revised law omits the quoted
19 language as unnecessary because an accepted general
20 principle of statutory construction requires a statute
21 to be given cumulative effect with other statutes
22 unless the statute provides otherwise or unless the
23 statute conflicts with another statute. That general
24 principle applies to the revised law.

25 Revised Law

26 Sec. 1202.153. FINDINGS REQUIRED. (a) Before ordering the
27 settlement and closing of a guardianship under an application filed
28 under Section 1202.051, the court must find by a preponderance of
29 the evidence that the ward is no longer partially or fully
30 incapacitated.

31 (b) Before granting additional powers to the guardian or
32 requiring the guardian to perform additional duties under an
33 application filed under Section 1202.051, the court must find by a
34 preponderance of the evidence that the current nature and degree of
35 the ward's incapacity warrants a modification of the guardianship
36 and that some or all of the ward's rights need to be further
37 restricted.

38 (c) Before limiting the powers granted to or duties required
39 to be performed by the guardian under an application filed under
40 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.)

Source Law

Sec. 694E. (a) Before ordering the settlement and closing of the guardianship under an application filed under Section 694A of this code, the court must find by a preponderance of the evidence that the ward is no longer partially or fully incapacitated.

(b) Before granting additional powers to the guardian or requiring the guardian to perform additional duties under an application filed under Section 694A of this code, 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 or all of the ward's rights need to be further restricted.

(c) Before limiting the powers granted to or duties required to be performed by the guardian under an application filed under Section 694A of this code, 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.

Revised Law

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.)

Source Law

Sec. 694J. (a) A court order entered with

1 respect to a request made under Section 694A of this
2 code to completely restore a ward's capacity or modify
3 a ward's guardianship must:

4 (1) contain the name of the guardian;
5 (2) contain the name of the ward; and
6 (3) state whether the type of guardianship
7 being addressed at the proceeding is a:

8 (A) guardianship of the person;
9 (B) guardianship of the estate; or
10 (C) guardianship of both the person
11 and the estate.

12 (b) In an order described by this section, the
13 court may not grant a power to a guardian or require
14 the guardian to perform a duty that is a power granted
15 to or a duty required to be performed by another
16 guardian.

17 Revisor's Note

18 Section 694J(a), Texas Probate Code, prescribes
19 general requirements for a court order entered with
20 respect to "a request made" under Section 694A, Texas
21 Probate Code, to completely restore a ward's capacity
22 or modify a ward's guardianship. Section 694A(a),
23 Texas Probate Code, revised as Section 1202.051 of
24 this chapter, authorizes a ward or an interested
25 person to file an application for a court order to
26 completely restore the ward's capacity or modify the
27 ward's guardianship. Section 694A(b), Texas Probate
28 Code, revised as Section 1202.054(a) of this chapter,
29 authorizes a ward to "request" an order by informal
30 letter to the court. Under Section 694A(c), Texas
31 Probate Code, revised in relevant part in this chapter
32 as Sections 1202.054(b) and (c), a court may issue an
33 order in response to an informal letter only after the
34 court appoints the court investigator or an attorney
35 ad litem to investigate the ward's circumstances and
36 the court investigator or attorney ad litem determines
37 that a termination or modification of the guardianship
38 is in the ward's best interests and files an
39 application to terminate or modify the guardianship.
40 Accordingly, the revised law substitutes "an
41 application filed under Section 1202.051" of this
42 chapter for the reference to "a request made" under

1 Section 694A because, under Section 694A, a court
2 order is available only as a result of an application
3 filed under that section.

4 Revised Law

5 Sec. 1202.155. ADDITIONAL REQUIREMENTS FOR ORDER RESTORING
6 WARD'S CAPACITY. If the court finds that a ward is no longer an
7 incapacitated person, the order completely restoring the ward's
8 capacity must contain findings of fact and specify, in addition to
9 the information required by Section 1202.154:

10 (1) that the ward is no longer an incapacitated
11 person;

12 (2) that there is no further need for a guardianship of
13 the person or estate of the ward;

14 (3) if the ward's incapacity resulted from a mental
15 condition, that the ward's mental capacity is completely restored;

16 (4) that the guardian is required to:

17 (A) immediately settle the guardianship in
18 accordance with this title; and

19 (B) deliver all of the remaining guardianship
20 estate to the ward; and

21 (5) that the clerk shall revoke letters of
22 guardianship when the guardianship is finally settled and closed.

23 (Tex. Prob. Code, Sec. 694G.)

24 Source Law

25 Sec. 694G. If the court finds that a ward is no
26 longer an incapacitated person, the order completely
27 restoring the ward's capacity must contain findings of
28 fact and specify:

29 (1) the information required by Section
30 694J of this code;

31 (2) that the ward is no longer an
32 incapacitated person;

33 (3) that there is no further need for a
34 guardianship of the person or estate of the ward;

35 (3-a) if the ward's incapacity resulted
36 from a mental condition, that the ward's mental
37 capacity is completely restored;

38 (4) that the guardian is required to:

39 (A) immediately settle the
40 guardianship in accordance with this chapter; and

41 (B) deliver all of the remaining
42 guardianship estate to the ward; and

43 (5) that the clerk shall revoke letters of
44 guardianship when the guardianship is finally settled

1 and closed.

2 Revised Law

3 Sec. 1202.156. ADDITIONAL REQUIREMENTS FOR ORDER MODIFYING
4 GUARDIANSHIP. If the court finds that a guardian's powers or duties
5 should be expanded or limited, the order modifying the guardianship
6 must contain findings of fact and specify, in addition to the
7 information required by Section 1202.154:

8 (1) the specific powers, limitations, or duties of the
9 guardian with respect to the care of the ward or the management of
10 the ward's property, as appropriate;

11 (2) the specific areas of protection and assistance to
12 be provided to the ward;

13 (3) any limitation of the ward's rights;

14 (4) if the ward's incapacity resulted from a mental
15 condition, whether the ward retains the right to vote; and

16 (5) that the clerk shall modify the letters of
17 guardianship to the extent applicable to conform to the order.

18 (Tex. Prob. Code, Sec. 694H.)

19 Source Law

20 Sec. 694H. If the court finds that a guardian's
21 powers or duties should be expanded or limited, the
22 order modifying the guardianship must contain findings
23 of fact and specify:

24 (1) the information required by Section
25 694J of this code;

26 (2) the specific powers, limitations, or
27 duties of the guardian with respect to the care of the
28 ward or the management of the property of the ward, as
29 appropriate;

30 (3) the specific areas of protection and
31 assistance to be provided to the ward;

32 (4) any limitation of the ward's rights;

33 (5) if the ward's incapacity resulted from
34 a mental condition, whether the ward retains the right
35 to vote; and

36 (6) that the clerk shall modify the
37 letters of guardianship to the extent applicable to
38 conform to the order.

39 Revised Law

40 Sec. 1202.157. ADDITIONAL REQUIREMENTS FOR ORDER
41 DISMISSING APPLICATION. If the court finds that a modification of
42 the ward's guardianship is not necessary or that the ward's capacity
43 has not been restored, the court shall dismiss the application and
44 enter an order that contains findings of fact and specifies, in

1 addition to the information required by Section 1202.154, that the
2 guardian's powers, limitations, or duties with respect to the
3 ward's care or the management of the ward's property remain
4 unchanged. (Tex. Prob. Code, Sec. 694I.)

5 Source Law

6 Sec. 694I. If the court finds that a
7 modification of the ward's guardianship is not
8 necessary, including that the ward's capacity has not
9 been restored, the court shall dismiss the application
10 and enter an order that contains findings of fact and
11 specifies:
12 (1) the information required by Section
13 694J of this code; and
14 (2) that the powers, limitations, or
15 duties of the guardian with respect to the care of the
16 ward or the management of the ward's property will
17 remain unchanged.

18 CHAPTER 1203. RESIGNATION, REMOVAL, OR DEATH OF GUARDIAN;
19 APPOINTMENT OF SUCCESSOR

20 SUBCHAPTER A. RESIGNATION OF GUARDIAN

21 Sec. 1203.001. RESIGNATION APPLICATION 518
22 Sec. 1203.002. IMMEDIATE ACCEPTANCE OF RESIGNATION;
23 DISCHARGE AND RELEASE 519
24 Sec. 1203.003. DELIVERY OF ESTATE PROPERTY TO
25 SUCCESSOR GUARDIAN FOLLOWING
26 RESIGNATION 520
27 Sec. 1203.004. HEARING DATE; CITATION 520
28 Sec. 1203.005. HEARING 521
29 Sec. 1203.006. REQUIREMENTS FOR DISCHARGE 523

30 [Sections 1203.007-1203.050 reserved for expansion]

31 SUBCHAPTER B. REMOVAL AND REINSTATEMENT OF GUARDIAN

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7 SUBCHAPTER A. RESIGNATION OF GUARDIAN

8 Revised Law

9 Sec. 1203.001. RESIGNATION APPLICATION. A guardian of the
10 estate or guardian of the person who wishes to resign the guardian's
11 trust shall file a written application with the court clerk,
12 accompanied by:

13 (1) in the case of a guardian of the estate, a complete
14 and verified exhibit and final account showing the true condition
15 of the guardianship estate entrusted to the guardian's care; or

16 (2) in the case of a guardian of the person, a verified
17 report containing the information required in the annual report
18 required under Subchapter C, Chapter 1163, showing the condition of
19 the ward entrusted to the guardian's care. (Tex. Prob. Code, Sec.
20 760(a).)

21 Source Law

22 Sec. 760. (a) A guardian of the estate who
23 wishes to resign the guardian's trust shall file with
24 the clerk a written application to the court to that
25 effect, accompanied by a full and complete exhibit and
26 final account, duly verified, showing the true
27 condition of the guardianship estate entrusted to the
28 guardian's care. A guardian of the person who wishes
29 to resign the guardian's trust shall file with the
30 clerk a written application to the court to that
31 effect, accompanied by a report setting forth the
32 information required in the annual report required
33 under this chapter, duly verified, showing the
34 condition of the ward entrusted to the guardian's care.

35 Revisor's Note

36 (1) Section 760(a), Texas Probate Code, refers
37 to a "full and complete" exhibit and final account. The
38 revised law omits "full" as unnecessary because in
39 this context the meaning of that term is included
40 within the meaning of "complete."

(2) Section 760(a), Texas Probate Code, refers to an exhibit and final account, and a report of a guardian of the person, that have been "duly verified." The revised law omits the references to "duly" in this context as unnecessary because the requirement that the exhibit and final account or the report be verified is sufficient to convey that the exhibit and final account or report, as applicable, must have met the requirements for verification.

(3) Section 760(a), Texas Probate Code, requires a guardian of the person to file a report containing the information required in the annual report required under "this chapter," meaning Chapter XIII, Texas Probate Code. Section 743, Texas Probate Code, is included in that chapter and prescribes the requirements for the referenced annual report. That section is revised in Subchapter C, Chapter 1163 of this code. The revised law substitutes a reference to Subchapter C, Chapter 1163 for the reference to "this chapter" for the convenience of the reader.

Revised Law

Sec. 1203.002. IMMEDIATE ACCEPTANCE OF RESIGNATION;
DISCHARGE AND RELEASE. (a) If the necessity exists, the court may
immediately accept the resignation of a guardian and appoint a
successor guardian as provided by Section 1203.102(b).

(b) The court may not discharge a person resigning as guardian of the estate whose resignation is accepted under Subsection (a), or release the person or the sureties on the person's bond, until a final order has been issued, or a final judgment has been rendered, on the final account required under Section 1203.001. (Tex. Prob. Code, Sec. 760(b) (part).)

Source Law

(b) If the necessity exists, the court may immediately accept a resignation and appoint a successor . . . [but] may not discharge the person resigning as guardian of the estate or release the

1 person or the sureties on the person's bond until final
2 order or judgment is rendered on the final account of
3 the guardian.

4 Revised Law

5 Sec. 1203.003. DELIVERY OF ESTATE PROPERTY TO SUCCESSOR
6 GUARDIAN FOLLOWING RESIGNATION. The court at any time may order a
7 resigning guardian who has any part of a ward's estate to deliver
8 any part of the estate to a person who has been appointed and has
9 qualified as successor guardian. (Tex. Prob. Code, Sec. 760(g).)

10 Source Law

11 (g) The court at any time may order a resigning
12 guardian who has all or part of the estate of a ward to
13 deliver all or part of the ward's estate to a person who
14 has been appointed and has qualified as successor
15 guardian.

16 Revised Law

17 Sec. 1203.004. HEARING DATE; CITATION. (a) When an
18 application to resign as guardian is filed under Section 1203.001,
19 supported by the exhibit and final account or report required under
20 that section, the court clerk shall bring the application to the
21 judge's attention and the judge shall set a date for a hearing on
22 the matter.

23 (b) After a hearing is set under Subsection (a), the clerk
24 shall issue a citation to all interested persons, showing:

25 (1) that an application that complies with Section
26 1203.001 has been filed; and

27 (2) the time and place set for the hearing at which the
28 interested persons may appear and contest the exhibit and final
29 account or report supporting the application.

30 (c) Unless the court directs that the citation under
31 Subsection (b) be published, the citation must be posted. (Tex.
32 Prob. Code, Sec. 760(c).)

33 Source Law

34 (c) On the filing of an application to resign,
35 supported by an exhibit and final account, the clerk
36 shall call the application to the attention of the
37 judge, who shall set a date for a hearing on the
38 matter. The clerk shall then issue a citation to all
39 interested persons, showing that proper application
40 has been filed and the time and place set for hearing,
41 at which time the interested persons may appear and
42 contest the exhibit and account or report. The

1 citation shall be posted, unless the court directs
2 that it be published.

3 Revisor's Note

4 Section 760(c), Texas Probate Code, refers to the
5 "exhibit and final account" supporting a guardian's
6 application to resign and subsequently refers to a
7 hearing at which an interested person may contest the
8 "exhibit and account or report." It is clear from the
9 context that both references refer to the supporting
10 materials required by Section 760(a), Texas Probate
11 Code, revised in this chapter as Section 1203.001.
12 That section requires a guardian of the estate to file
13 an exhibit and final account with an application to
14 resign and requires a guardian of the person to file a
15 report with that type of application. The revised law
16 substitutes "exhibit and final account or report" for
17 the reference to the "exhibit and final account"
18 supporting the application because it is clear from
19 the context provided by the subsequent reference to
20 contesting the "exhibit and account or report" that
21 the omission of "or report" in the first reference was
22 inadvertent. Subsequent references in Section 760(d),
23 Texas Probate Code, revised in this chapter as Section
24 1203.005, to the "account or report" confirm that the
25 hearing may involve an application supported by a
26 report. In addition, the revised law throughout this
27 chapter substitutes "exhibit and final account" for
28 references to "exhibit and account" for consistency of
29 terminology.

30 Revised Law

31 Sec. 1203.005. HEARING. (a) At the time set for the
32 hearing under Section 1203.004, unless the court continues the
33 hearing, and if the court finds that the citation required under
34 that section has been properly issued and served, the court shall:

35 (1) examine the exhibit and final account or report

1 required by Section 1203.001;

2 (2) hear all evidence for and against the exhibit,
3 final account, or report; and

4 (3) if necessary, restate and audit and settle the
5 exhibit, final account, or report.

6 (b) If the court is satisfied that the matters entrusted to
7 the guardian applying to resign have been handled and accounted for
8 in accordance with the law, the court shall:

9 (1) enter an order approving the exhibit and final
10 account or report; and

11 (2) require that any estate property remaining in the
12 applicant's possession be delivered to the person entitled by law
13 to receive the property.

14 (c) A guardian of the person shall comply with all court
15 orders concerning the guardian's ward. (Tex. Prob. Code, Sec.
16 760(d).)

17 Source Law

18 (d) At the time set for hearing, unless it has
19 been continued by the court, if the court finds that
20 citation has been duly issued and served, the court
21 shall proceed to examine the exhibit and account or
22 report and hear all evidence for and against the
23 exhibit, account, or report and shall, if necessary,
24 restate, and audit and settle the exhibit, account, or
25 report. If the court is satisfied that the matters
26 entrusted to the applicant have been handled and
27 accounted for in accordance with the law, the court
28 shall enter an order of approval and require that the
29 estate remaining in the possession of the applicant,
30 if any, be delivered to the person entitled by law to
31 receive it. A guardian of the person is required to
32 comply with all orders of the court concerning the ward
33 of the guardian.

34 Revisor's Note

35 (1) Section 760(d), Texas Probate Code,
36 provides that the court shall proceed with a hearing on
37 a resignation application if the court finds that
38 citation has been "duly" issued and served. The
39 revised law substitutes "properly" for "duly" because
40 the terms are synonymous in context and "properly" is
41 more consistent with modern usage.

42 (2) Section 760(d), Texas Probate Code,

1 requires the court to examine an exhibit and final
2 account or report supporting a resignation application
3 and to enter an "order of approval" if the court is
4 satisfied as to certain matters. It is clear from the
5 context that the referenced order is an order
6 approving the exhibit and final account or report the
7 court is required to examine. Therefore, the revised
8 law substitutes "order approving the exhibit and final
9 account or report" for "order of approval" for
10 clarity.

11 Revised Law

12 Sec. 1203.006. REQUIREMENTS FOR DISCHARGE. (a) A guardian
13 applying to resign may not be discharged until:

14 (1) the resignation application has been heard;
15 (2) the exhibit and final account or report required
16 under Section 1203.001 has been examined, settled, and approved;
17 and

18 (3) the applicant has satisfied the court that the
19 applicant has:

20 (A) delivered any estate property remaining in
21 the applicant's possession; or

22 (B) complied with all court orders relating to
23 the applicant's trust as guardian.

24 (b) When a guardian applying to resign has fully complied
25 with the court orders, the court shall enter an order:

26 (1) accepting the resignation; and
27 (2) discharging the applicant and, if the applicant is
28 under bond, the applicant's sureties. (Tex. Prob. Code, Secs.
29 760(e), (f).)

30 Source Law

31 (e) A resigning guardian may not be discharged
32 until the application has been heard, the exhibit and
33 account or report examined, settled, and approved, and
34 the guardian has satisfied the court that the guardian
35 has delivered the estate, if there is any part of the
36 estate remaining in the possession of the guardian, or
37 has complied with all orders of the court with relation
38 to the guardian's trust.

1 (f) When the resigning guardian has complied in
2 all respects with the orders of the court, an order
3 shall be made accepting the resignation, discharging
4 the applicant, and, if the applicant is under bond, the
5 sureties of the guardian.

6 [Sections 1203.007-1203.050 reserved for expansion]

7 SUBCHAPTER B. REMOVAL AND REINSTATEMENT OF GUARDIAN

8 Revised Law

9 Sec. 1203.051. REMOVAL WITHOUT NOTICE. The court, on the
10 court's own motion or on the motion of an interested person,
11 including the ward, and without notice, may remove a guardian
12 appointed under this title who:

13 (1) neglects to qualify in the manner and time
14 required by law;

15 (2) fails to return, not later than the 30th day after
16 the date the guardian qualifies, an inventory of the guardianship
17 estate property and a list of claims that have come to the
18 guardian's knowledge, unless that deadline is extended by court
19 order;

20 (3) if required, fails to give a new bond within the
21 period prescribed;

22 (4) is absent from the state for a consecutive period
23 of three or more months without the court's permission, or removes
24 from the state;

25 (5) cannot be served with notices or other processes
26 because:

27 (A) the guardian's whereabouts are unknown;

28 (B) the guardian is eluding service; or

29 (C) the guardian is a nonresident of this state
30 who does not have a resident agent to accept service of process in
31 any guardianship proceeding or other matter relating to the
32 guardianship;

33 (6) subject to Section 1203.056(a):

34 (A) has misapplied, embezzled, or removed from
35 the state, or is about to misapply, embezzle, or remove from the
36 state, any of the property entrusted to the guardian's care; or

37 (B) has neglected or cruelly treated a ward; or

1 (7) has neglected to educate or maintain the ward as
2 liberally as the means of the ward and the condition of the ward's
3 estate permit. (Tex. Prob. Code, Sec. 761(a).)

4 Source Law

5 Sec. 761. (a) The court, on its own motion or on
6 motion of any interested person, including the ward,
7 and without notice, may remove any guardian, appointed
8 under this chapter, who:

9 (1) neglects to qualify in the manner and
10 time required by law;

11 (2) fails to return within 30 days after
12 qualification, unless the time is extended by order of
13 the court, an inventory of the property of the
14 guardianship estate and list of claims that have come
15 to the guardian's knowledge;

16 (3) having been required to give a new
17 bond, fails to do so within the time prescribed;

18 (4) absents himself from the state for a
19 period of three months at one time without permission
20 of the court, or removes from the state;

21 (5) cannot be served with notices or other
22 processes because of the fact that:

23 (A) the guardian's whereabouts are
24 unknown;

25 (B) the guardian is eluding service;
26 or

27 (C) the guardian is a nonresident of
28 this state who does not have a resident agent to accept
29 service of process in any guardianship proceeding or
30 other matter relating to the guardianship;

31 (6) has misapplied, embezzled, or removed
32 from the state, or is about to misapply, embezzle, or
33 remove from the state, all or any part of the property
34 committed to the guardian's care;

35 (7) has neglected or cruelly treated a
36 ward; or

37 (8) has neglected to educate or maintain
38 the ward as liberally as the means of the ward and the
39 condition of the ward's estate permit.

40 Revisor's Note

41 (1) Section 761(a)(4), Texas Probate Code,
42 provides for the removal of a guardian who is absent
43 from the state "for a period of three months at one
44 time." It is clear from the context that this section
45 applies to a guardian who is absent from the state for
46 more than three consecutive months, as well as to a
47 guardian who is absent for exactly three consecutive
48 months. For that reason, the revised law substitutes
49 "for a consecutive period of three or more months" for
50 the quoted language.

51 (2) Sections 761(a)(6) and (7), Texas Probate

1 Code, specify certain grounds on which a guardian may
2 be removed. Section 761(b), Texas Probate Code,
3 revised in this chapter as Section 1203.056(a),
4 prescribes additional requirements relating to
5 evidence and the standard of proof for removal of a
6 guardian on those grounds. The revised law adds a
7 cross-reference to Section 1203.056(a) for the
8 convenience of the reader.

9 (3) Section 761(a)(6), Texas Probate Code,
10 refers to property "committed" to the guardian's care.
11 Throughout this chapter, the revised law substitutes
12 "entrusted" for "committed" for consistency of
13 terminology.

14 Revised Law

15 Sec. 1203.052. REMOVAL WITH NOTICE. (a) The court may
16 remove a guardian on the court's own motion, or on the complaint of
17 an interested person, after the guardian has been cited by personal
18 service to answer at a time and place set in the notice, if:

19 (1) sufficient grounds appear to support a belief that
20 the guardian has misapplied, embezzled, or removed from the state,
21 or is about to misapply, embezzle, or remove from the state, any of
22 the property entrusted to the guardian's care;

23 (2) the guardian fails to return any account or report
24 that is required by law to be made;

25 (3) the guardian fails to obey a proper order of the
26 court that has jurisdiction with respect to the performance of the
27 guardian's duties;

28 (4) the guardian is proved to have been guilty of gross
29 misconduct or mismanagement in the performance of the guardian's
30 duties;

31 (5) the guardian:

32 (A) becomes incapacitated;

33 (B) is sentenced to the penitentiary; or

34 (C) from any other cause, becomes incapable of

1 properly performing the duties of the guardian's trust;

2 (6) the guardian neglects or cruelly treats the ward;

3 (7) the guardian neglects to educate or maintain the
4 ward as liberally as the means of the ward's estate and the ward's
5 ability or condition permit;

6 (8) the guardian interferes with the ward's progress
7 or participation in programs in the community;

8 (9) the guardian fails to comply with the requirements
9 of Subchapter G, Chapter 1104;

10 (10) the court determines that, because of the
11 dissolution of the joint guardians' marriage, the termination of
12 the guardians' joint appointment and the continuation of only one
13 of the joint guardians as the sole guardian is in the best interest
14 of the ward; or

15 (11) the guardian would be ineligible for appointment
16 as a guardian under Subchapter H, Chapter 1104.

17 (b) In addition to the authority granted to the court under
18 Subsection (a), the court may, on the complaint of the Guardianship
19 Certification Board, remove a guardian who would be ineligible for
20 appointment under Subchapter H, Chapter 1104, because of the
21 guardian's failure to maintain the certification required under
22 Subchapter F, Chapter 1104. The guardian shall be cited to appear
23 and contest the request for removal under this subsection in the
24 manner provided by Subsection (a). (Tex. Prob. Code, Secs. 761(c),
25 (c-1).)

26 Source Law

27 (c) The court may remove a guardian on its own
28 motion, or on the complaint of an interested person,
29 after the guardian has been cited by personal service
30 to answer at a time and place set in the notice, when:

31 (1) sufficient grounds appear to support
32 belief that the guardian has misapplied, embezzled, or
33 removed from the state, or that the guardian is about
34 to misapply, embezzle, or remove from the state, all or
35 any part of the property committed to the care of the
36 guardian;

37 (2) the guardian fails to return any
38 account or report that is required by law to be made;

39 (3) the guardian fails to obey any proper
40 order of the court having jurisdiction with respect to
41 the performance of the guardian's duties;

42 (4) the guardian is proved to have been

1 guilty of gross misconduct or mismanagement in the
2 performance of the duties of the guardian;

3 (5) the guardian becomes incapacitated, or
4 is sentenced to the penitentiary, or from any other
5 cause becomes incapable of properly performing the
6 duties of the guardian's trust;

7 (6) the guardian neglects or cruelly
8 treats the ward;

9 (6-a) the guardian neglects to educate or
10 maintain the ward as liberally as the means of the
11 ward's estate and the ward's ability or condition
12 permit;

13 (7) the guardian interferes with the
14 ward's progress or participation in programs in the
15 community;

16 (8) the guardian fails to comply with the
17 requirements of Section 697 of this code;

18 (9) the court determines that, because of
19 the dissolution of the joint guardians' marriage, the
20 termination of the guardians' joint appointment and
21 the continuation of only one of the joint guardians as
22 the sole guardian is in the best interest of the ward;
23 or

24 (10) the guardian would be ineligible for
25 appointment as a guardian under Section 681 of this
26 code.

27 (c-1) In addition to the authority granted to
28 the court under Subsection (c) of this section, the
29 court may, on the complaint of the Guardianship
30 Certification Board, remove a guardian who would be
31 ineligible for appointment under Section 681 of this
32 code because of the guardian's failure to maintain the
33 certification required under Section 697B of this
34 code. The guardian shall be cited to appear and
35 contest the request for removal under this subsection
36 in the manner provided by Subsection (c) of this
37 section.

38 Revised Law

39 Sec. 1203.053. REMOVAL ORDER. An order removing a guardian
40 shall:

41 (1) state the cause of the removal;

42 (2) require that, if the removed guardian has been
43 personally served with citation, any letters of guardianship issued
44 to the removed guardian be surrendered and that, regardless of
45 whether the letters have been delivered, all the letters be
46 canceled of record; and

47 (3) require the removed guardian to:

48 (A) deliver any estate property in the guardian's
49 possession to the persons entitled to the property or to one who has
50 been appointed and has qualified as successor guardian; and

51 (B) relinquish control of the ward's person as
52 required in the order. (Tex. Prob. Code, Sec. 761(d).)

1 Source Law

2 (d) The order of removal shall state the cause
3 of the removal. It must require that any letters
4 issued to the person who is removed shall, if the
5 removed person has been personally served with
6 citation, be surrendered and that all those letters be
7 cancelled of record, whether or not delivered. It must
8 further require, as to all the estate remaining in the
9 hands of a removed person, delivery of the estate to
10 the person or persons entitled to the estate, or to one
11 who has been appointed and has qualified as successor
12 guardian, and as to the person of a ward, that control
13 be relinquished as required in the order.

14 Revisor's Note

15 (1) Section 761(d), Texas Probate Code, refers
16 to "letters" issued to a removed guardian. For clarity
17 and the convenience of the reader, throughout this
18 chapter the revised law specifies that the revised law
19 concerns "letters of guardianship" to distinguish
20 those letters from letters testamentary or of
21 administration.

22 (2) Section 761(d), Texas Probate Code, refers
23 to the estate remaining in the "hands" of a removed
24 guardian. Throughout this chapter, the revised law
25 substitutes "possession" for "hands" because the terms
26 are synonymous in context and "possession" is more
27 consistent with modern usage.

28 Revised Law

29 Sec. 1203.054. DISCHARGE AND RELEASE FOLLOWING REMOVAL.
30 With respect to a person who is removed as guardian of the estate
31 and whose successor is appointed without citation or notice as
32 provided by Section 1203.102(b), the court may not discharge the
33 person or release the person or the sureties on the person's bond
34 until a final order has been issued or final judgment has been
35 rendered on the guardian's final account. (Tex. Prob. Code, Sec.
36 761(f) (part).)

37 Source Law

38 (f) [If the necessity exists, the court may
39 immediately appoint a successor without citation or
40 notice but] may not discharge the person removed as
41 guardian of the estate or release the person or the
42 sureties on the person's bond until final order or

1 judgment is rendered on the final account of the
2 guardian.

3 Revised Law

4 Sec. 1203.055. DELIVERY OF ESTATE PROPERTY TO SUCCESSOR
5 GUARDIAN FOLLOWING REMOVAL. The court at any time may order a
6 person removed as guardian under this subchapter who has any part of
7 a ward's estate to deliver any part of the estate to a person who has
8 been appointed and has qualified as successor guardian. (Tex.
9 Prob. Code, Sec. 761(g).)

10 Source Law

11 (g) The court at any time may order a person
12 removed as guardian under this section who has all or
13 part of the estate of a ward to deliver all or part of
14 the ward's estate to a person who has been appointed
15 and has qualified as successor guardian.

16 Revisor's Note

17 Section 761(g), Texas Probate Code, refers to a
18 person removed as guardian under "this section,"
19 meaning Section 761, Texas Probate Code. Section 761
20 is revised in this subchapter, which also contains the
21 revision of other provisions not derived from Section
22 761. However, the revised law substitutes a reference
23 to "this subchapter" for the reference to "this
24 section" because the other provisions revised in the
25 subchapter are not provisions under which a guardian
26 may be removed.

27 Revised Law

28 Sec. 1203.056. REMOVAL AND REINSTATEMENT OF GUARDIAN UNDER
29 CERTAIN CIRCUMSTANCES. (a) The court may remove a guardian under
30 Section 1203.051(6)(A) or (B) only on the presentation of clear and
31 convincing evidence given under oath.

32 (b) Not later than the 10th day after the date the court
33 signs the order of removal, a guardian who is removed under Section
34 1203.051(6)(A) or (B) may file an application with the court for a
35 hearing to determine whether the guardian should be reinstated.

36 (c) On the filing of an application under Subsection (b),
37 the court clerk shall issue to the applicant, the ward, a person

1 interested in the ward's welfare or estate, and, if applicable, a
2 person who has control of the care and custody of the ward a notice
3 stating:

4 (1) that an application for reinstatement has been
5 filed;

6 (2) the name of the ward; and

7 (3) the name of the applicant for reinstatement.

8 (d) The notice required by Subsection (c) must cite all
9 persons interested in the ward's welfare or estate to appear at the
10 time and place stated in the notice if the persons wish to contest
11 the application.

12 (e) If, at the conclusion of a hearing under this section,
13 the court is satisfied by a preponderance of the evidence that the
14 applicant did not engage in the conduct that directly led to the
15 applicant's removal, the court shall:

16 (1) set aside any order appointing a successor
17 guardian; and

18 (2) enter an order reinstating the applicant as
19 guardian of the ward or estate.

20 (f) If the court sets aside the appointment of a successor
21 guardian under this section, the court may require the successor
22 guardian to prepare and file, under oath, an accounting of the
23 estate and to detail the disposition the successor has made of the
24 estate property. (Tex. Prob. Code, Secs. 761(b), 762.)

25 Source Law

26 [Sec. 761]

27 (b) The court may remove a personal
28 representative under Subsection (a)(6) or (7) of this
29 section only on the presentation of clear and
30 convincing evidence given under oath.

31 Sec. 762. (a) Not later than the 10th day after
32 the date the court signs the order of removal, a
33 personal representative who is removed under
34 Subsection (a)(6) or (7), Section 761, of this code may
35 file an application with the court for a hearing to
36 determine whether the personal representative should
37 be reinstated.

38 (b) On the filing of an application for a
39 hearing under this section, the court clerk shall
40 issue a notice stating that the application for
41 reinstatement was filed, the name of the ward, and the
42 name of the applicant. The clerk shall issue the

1 notice to the applicant, the ward, a person interested
2 in the welfare of the ward or the ward's estate, and, if
3 applicable, a person who has control of the care and
4 custody of the ward. The notice must cite all persons
5 interested in the estate or welfare of the ward to
6 appear at the time and place stated in the notice if
7 they wish to contest the application.

8 (c) If, at the conclusion of a hearing under
9 this section, the court is satisfied by a
10 preponderance of the evidence that the applicant did
11 not engage in the conduct that directly led to the
12 applicant's removal, the court shall set aside an order
13 appointing a successor representative, if any, and
14 shall enter an order reinstating the applicant as
15 personal representative of the ward or estate.

16 (d) If the court sets aside the appointment of a
17 successor representative under this section, the court
18 may require the successor representative to prepare
19 and file, under oath, an accounting of the estate and
20 to detail the disposition the successor has made of the
21 property of the estate.

22 Revisor's Note

23 Section 761(b), Texas Probate Code, prescribes a
24 standard of proof to remove a "personal
25 representative" under Section 761(a)(6) or (7), Texas
26 Probate Code, and Section 762, Texas Probate Code,
27 provides a procedure for the reinstatement of that
28 removed "personal representative." Section 3(aa),
29 Texas Probate Code, revised as Section 22.031 of this
30 code, defines "personal representative" for purposes
31 of the code to include executors and administrators.
32 Section 601(23), Texas Probate Code, revised as
33 Section 1002.028 of this code, further provides that
34 in Chapter XIII, Texas Probate Code, which includes
35 Sections 761 and 762, the term includes a guardian.
36 Although it is clear from these definitions that
37 "personal representative" could mean an executor,
38 administrator, or guardian, the revised law
39 substitutes "guardian" for "personal representative"
40 because Sections 761(b) and 762 relate to a removal
41 under Section 761(a)(6) or (7), and those sections
42 clearly only address the removal of a guardian.

43 Revised Law

44 Sec. 1203.057. REMOVAL OF JOINT GUARDIAN. If a joint
45 guardian is removed under Section 1203.052(a)(10), the other joint

guardian is entitled to continue to serve as the sole guardian unless removed for a reason other than the dissolution of the joint guardians' marriage. (Tex. Prob. Code, Sec. 761(e).)

Source Law

(e) If a joint guardian is removed under Subsection (c)(9) of this section, the other joint guardian is entitled to continue to serve as the sole guardian unless removed for a reason other than the dissolution of the joint guardians' marriage.

[Sections 1203.058-1203.100 reserved for expansion]

SUBCHAPTER C. APPOINTMENT OF SUCCESSOR GUARDIAN; REVOCATION OF LETTERS

Revised Law

Sec. 1203.101. REQUIREMENTS FOR REVOCATION OF LETTERS. Except as otherwise expressly provided by this title, letters of guardianship may be revoked only:

- (1) on application; and
- (2) after personal service of citation on the person whose letters are sought to be revoked requiring the person to appear and show cause why the application should not be granted. (Tex. Prob. Code, Sec. 759(f).)

Source Law

(f) Except when otherwise expressly provided in this chapter, letters may not be revoked except on application, and after personal service of citation on the person whose letters are sought to be revoked, that the person appear and show cause why the application should not be granted.

Revised Law

Sec. 1203.102. APPOINTMENT BECAUSE OF RESIGNATION, REMOVAL, OR DEATH. (a) If a guardian resigns, is removed, or dies, the court may appoint a successor guardian on application and on service of notice as directed by the court, except as provided by Subsection (b). In the event the guardian of the person or of the estate of a ward dies, a personal representative of the deceased guardian, at the time and in the manner ordered by the court, shall account for, pay, and deliver all guardianship property entrusted to the representative's care to a person legally entitled to receive the property.

1 (b) The court may appoint a successor guardian under this
2 section without citation or notice if the court finds that a
3 necessity exists for the immediate appointment. (Tex. Prob. Code,
4 Secs. 695(a), 759(a), 760(b) (part), 761(f) (part).)

5 Source Law

6 Sec. 695. (a) If a guardian dies, resigns, or
7 is removed, the court may, on application and on
8 service of notice as directed by the court, appoint a
9 successor guardian. On a finding that a necessity for
10 the immediate appointment of a successor guardian
11 exists, the court may appoint a successor guardian
12 without citation or notice.

13 Sec. 759. (a) In case of the death of the
14 guardian of the person or of the estate of a ward, a
15 personal representative of the deceased guardian shall
16 account for, pay, and deliver to a person legally
17 entitled to receive the property, all the property
18 belonging to the guardianship that is entrusted to the
19 care of the representative, at the time and in the
20 manner as the court orders.

21 [Sec. 760]

22 (b) [If the necessity exists, the court may
23 immediately . . . appoint a successor] without
24 citation or notice but

25 [Sec. 761]

26 (f) If the necessity exists, the court may
27 immediately appoint a successor without citation or
28 notice but

29 Revised Law

30 Sec. 1203.103. APPOINTMENT BECAUSE OF EXISTENCE OF PRIOR
31 RIGHT. If letters of guardianship have been granted to a person and
32 another person applies for letters, the previously issued letters
33 shall be revoked, and letters shall be granted to the subsequent
34 applicant if that applicant:

35 (1) is qualified;

36 (2) has a prior right to be appointed successor
37 guardian; and

38 (3) has not waived that prior right. (Tex. Prob. Code,
39 Sec. 759(b).)

40 Source Law

41 (b) If letters have been granted to a person,
42 and another person whose right to be appointed
43 successor guardian is prior and who has not waived the
44 right and is qualified, applies for letters, the
45 letters previously granted shall be revoked and other
46 letters shall be granted to the applicant.

1 the testator died or the will was proved and, as a result, could
2 not:

3 (1) present the will for probate not later than the
4 30th day after the testator's death; or

5 (2) accept and qualify as guardian not later than the
6 20th day after the date the will was probated.

7 (b) A person to whom this section applies may accept and
8 qualify as guardian not later than the 60th day after the date the
9 person recovers from illness or returns to the state if proof is
10 presented to the court that the person was ill or absent.

11 (c) If a person accepts and qualifies as guardian under
12 Subsection (b) and letters of guardianship have been issued to
13 another person, the other person's letters shall be revoked. (Tex.
14 Prob. Code, Sec. 759(d).)

15 Source Law

16 (d) If a person named in a will as guardian was
17 ill or absent from the state when the testator died, or
18 when the will was proved, and for that reason could not
19 present the will for probate not later than the 30th
20 day after the testator's death, or accept and qualify
21 as guardian not later than the 20th day after the date
22 the will was probated, the person may accept and
23 qualify as guardian not later than the 60th day after
24 the person's return or recovery from illness, on proof
25 to the court that the person was absent or ill. If the
26 letters have been issued to another person, the
27 letters shall be revoked.

28 Revised Law

29 Sec. 1203.106. APPOINTMENT WHEN WILL DISCOVERED AFTER GRANT
30 OF LETTERS. If, after letters of guardianship have been issued, it
31 is discovered that the decedent left a lawful will, the letters
32 shall be revoked and proper letters shall be issued to a person
33 entitled to the letters. (Tex. Prob. Code, Sec. 759(e).)

34 Source Law

35 (e) If it is discovered after letters of
36 guardianship have been issued that the deceased person
37 left a lawful will, the letters shall be revoked and
38 proper letters of guardianship issued to a person
39 entitled to receive the letters.

40 Revisor's Note

41 Section 759(e), Texas Probate Code, refers to
42 "the deceased person." Throughout the Texas Probate

1 Code, a deceased person is more commonly referred to as
2 a "decedent." The revised law substitutes a reference
3 to the "decedent" for the reference to the "deceased
4 person" for consistency of terminology throughout this
5 code.

6 Revised Law

7 Sec. 1203.107. APPOINTMENT ON REMOVAL OF LITIGATION
8 CONFLICT. The court may appoint as successor guardian a spouse,
9 parent, or child of a proposed ward who was disqualified from
10 serving as guardian because of a litigation conflict under Section
11 1104.354(1) on the removal of the conflict that caused the
12 disqualification if the spouse, parent, or child is otherwise
13 qualified to serve as a guardian. (Tex. Prob. Code, Sec. 759(h).)

14 Source Law

15 (h) The court may appoint as successor guardian
16 a spouse, parent, or child of a proposed ward who has
17 been disqualified from serving as guardian because of
18 a litigation conflict under Section 681(4) of this
19 code on removal of the conflict that caused the initial
20 disqualification if the spouse, parent, or child is
21 otherwise qualified to serve as a guardian.

22 Revised Law

23 Sec. 1203.108. APPOINTMENT OF DEPARTMENT OF AGING AND
24 DISABILITY SERVICES AS SUCCESSOR GUARDIAN. (a) In this section,
25 "department" means the Department of Aging and Disability Services.

26 (b) The court may appoint the department as a successor
27 guardian of the person or estate, or both, of a ward who has been
28 adjudicated as totally incapacitated if:

29 (1) there is no less-restrictive alternative to
30 continuation of the guardianship;

31 (2) there is no family member or other suitable
32 person, including a guardianship program, willing and able to serve
33 as the ward's successor guardian;

34 (3) the ward is located more than 100 miles from the
35 court that created the guardianship;

36 (4) the ward has private assets or access to
37 government benefits to pay for the ward's needs;

(5) the department is served with citation and a hearing is held regarding the department's appointment as proposed successor guardian; and

(6) the appointment of the department does not violate a limitation imposed by Subsection (c).

(c) The number of appointments under Subsection (b) is subject to an annual limit of 55. The appointments must be distributed equally or as equally as possible among the health and human services regions of this state. The department, at the department's discretion, may establish a different distribution scheme to promote the efficient use and administration of resources.

(d) If the department is named as a proposed successor guardian in an application in which the department is not the applicant, citation must be issued and served on the department as provided by Section 1051.103(5). (Tex. Prob. Code, Secs. 695(c), (d), (e).)

Source Law

(c) The court may appoint the Department of Aging and Disability Services as a successor guardian of the person or estate, or both, of a ward who has been adjudicated as totally incapacitated if:

(1) there is no less restrictive alternative to continuation of the guardianship;

(2) there is no family member or other suitable person, including a guardianship program, willing and able to serve as the ward's successor guardian;

(3) the ward is located more than 100 miles from the court that created the guardianship;

(4) the ward has private assets or access to government benefits to pay for the needs of the ward;

(5) the department is served with citation and a hearing is held regarding the department's appointment as proposed successor guardian; and

(6) the appointment of the department does not violate a limitation imposed by Subsection (d) of this section.

(d) The number of appointments under Subsection (c) of this section is subject to an annual limit of 55. The appointments must be distributed equally or as near as equally as possible among the health and human services regions of this state. The Department of Aging and Disability Services at its discretion may establish a different distribution scheme to promote the efficient use and administration of resources.

(e) If the Department of Aging and Disability Services is named as a proposed successor guardian in an application in which the department is not the

1 applicant, citation must be issued and served on the
2 department as provided by Section 633(c)(5) of this
3 code.

4 [Sections 1203.109-1203.150 reserved for expansion]

5 SUBCHAPTER D. SUCCESSOR GUARDIANS FOR WARDS OF GUARDIANSHIP

6 PROGRAMS OR GOVERNMENTAL ENTITIES

7 Revised Law

8 Sec. 1203.151. NOTICE OF AVAILABILITY OF SUCCESSOR
9 GUARDIAN. (a) If a guardianship program or governmental entity
10 serving as a guardian for a ward under this title becomes aware of a
11 family member or friend of the ward, or any other interested person,
12 who is willing and able to serve as the ward's successor guardian,
13 the program or entity shall notify the court in which the
14 guardianship is pending of the individual's willingness and ability
15 to serve.

16 (b) If, while serving as a guardian for a ward under this
17 title, the Department of Aging and Disability Services becomes
18 aware of a guardianship program or private professional guardian
19 willing and able to serve as the ward's successor guardian, and the
20 department is not aware of a family member or friend of the ward, or
21 any other interested person, who is willing and able to serve in
22 that capacity, the department shall notify the court in which the
23 guardianship is pending of the guardianship program's or private
24 professional guardian's willingness and ability to serve. (Tex.
25 Prob. Code, Secs. 695A(a), (a-1).)

26 Source Law

27 Sec. 695A. (a) If a guardianship program or
28 governmental entity serving as a guardian for a ward
29 under this chapter becomes aware of a family member or
30 friend of the ward or any other interested person who
31 is willing and able to serve as the ward's successor
32 guardian, the program or entity shall notify the court
33 in which the guardianship is pending of the
34 individual's willingness and ability.

35 (a-1) If, while serving as a guardian for a ward
36 under this chapter, the Department of Aging and
37 Disability Services becomes aware of a guardianship
38 program or private professional guardian willing and
39 able to serve as the ward's successor guardian and the
40 department is not aware of a family member or friend of
41 the ward or any other interested person who is willing
42 and able to serve as the ward's successor guardian, the
43 department shall notify the court in which the
44 guardianship is pending of the guardianship program's
45 or private professional guardian's willingness and

1 ability to serve.

2 Revised Law

3 Sec. 1203.152. DETERMINATION OF PROPOSED SUCCESSOR
4 GUARDIAN'S QUALIFICATION TO SERVE. When the court is notified of
5 the existence of a proposed successor guardian under Section
6 1203.151(a), or the court otherwise becomes aware of a family
7 member, a friend, or any other interested person who is willing and
8 able to serve as a successor guardian for a ward of a guardianship
9 program or governmental entity, the court shall determine whether
10 the proposed successor guardian is qualified to serve under this
11 title as the ward's successor guardian. (Tex. Prob. Code, Sec.
12 695A(b).)

13 Source Law

14 (b) When the court is notified of the existence
15 of a proposed successor guardian under Subsection (a)
16 of this section or the court otherwise becomes aware of
17 a family member, friend, or any other interested
18 person who is willing and able to serve as a successor
19 guardian for a ward of a guardianship program or
20 governmental entity, the court shall determine whether
21 the proposed successor guardian is qualified to serve
22 under this chapter as the ward's successor guardian.

23 Revised Law

24 Sec. 1203.153. APPLICATION TO APPOINT SUCCESSOR GUARDIAN.
25 (a) If the court finds under Section 1203.152 that the proposed
26 successor guardian for a ward is not disqualified from being
27 appointed as the ward's successor guardian under Subchapter H,
28 Chapter 1104, and that the appointment is in the ward's best
29 interests, the guardianship program or governmental entity serving
30 as the ward's guardian or the court, on the court's own motion, may
31 file an application to appoint the individual as the ward's
32 successor guardian.

33 (b) Service of notice on an application filed under this
34 section shall be made as directed by the court. (Tex. Prob. Code,
35 Sec. 695A(c).)

36 Source Law

37 (c) If the court finds under Subsection (b) of
38 this section that the proposed successor guardian for
39 a ward is not disqualified from being appointed as the
40 ward's successor guardian under Section 681 of this
41 code and that the appointment is in the ward's best

1 interests, the guardianship program or governmental
2 entity serving as the ward's guardian or the court, on
3 the court's own motion, may file an application to
4 appoint the individual as the ward's successor
5 guardian. Service of notice on an application filed
6 under this subsection shall be made as directed by the
7 court.

8 [Sections 1203.154-1203.200 reserved for expansion]

9 SUBCHAPTER E. PROCEDURES AFTER RESIGNATION, REMOVAL, OR DEATH OF
10 GUARDIAN

11 Revised Law

12 Sec. 1203.201. PAYMENT TO WARD WHILE OFFICE OF GUARDIAN IS
13 VACANT. (a) A debtor, obligor, or payor may pay or tender money or
14 another thing of value falling due to a ward while the office of
15 guardian is vacant to the court clerk for the credit of the ward.

16 (b) Payment or tender under Subsection (a) discharges the
17 debtor, obligor, or payor of the obligation for all purposes to the
18 extent and purpose of the payment or tender.

19 (c) The court clerk shall issue a receipt for any payment or
20 tender accepted under this section. (Tex. Prob. Code, Sec.
21 759(g).)

22 Source Law

23 (g) Money or any other thing of value falling
24 due to a ward while the office of the guardian is
25 vacant may be paid, delivered, or tendered to the clerk
26 of the court for credit of the ward, and the debtor,
27 obligor, or payor shall be discharged of the
28 obligation for all purposes to the extent and purpose
29 of the payment or tender. If the clerk accepts the
30 payment or tender, the clerk shall issue a proper
31 receipt for the payment or tender.

32 Revisor's Note

33 (1) Section 759(g), Texas Probate Code,
34 provides that "[m]oney or any other thing of value
35 . . . may be paid, delivered, or tendered." The
36 revised law omits "delivered" as unnecessary because,
37 in this context, the meaning of "delivered" is
38 included within the meaning of "paid." *Black's Law*
39 *Dictionary* (revised eighth edition, 2004) defines
40 "payment" as the "[p]erformance of an obligation by
41 the delivery of money or some other valuable thing
42 accepted in partial or full discharge of the

obligation."

(2) Section 759(g), Texas Probate Code, requires a court clerk to issue a "proper receipt." The revised law omits "proper" in this context as unnecessary. The requirement that the clerk issue a receipt is sufficient to convey that the receipt must be proper.

Revised Law

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

(3) commence a suit on the bond or bonds of the predecessor, in the successor's own name and capacity, for all the estate property that:

(A) came into the predecessor's possession; and

(B) has not been accounted for by the predecessor. (Tex. Prob. Code, Secs. 695(b), 763, 764.)

Source Law

[Sec. 695]

(b) A successor guardian has the powers and rights and is subject to all of the duties of the preceding guardian.

Sec. 763. In addition, a successor guardian may make himself, and may be made, a party to a suit prosecuted by or against the predecessor of the

1 successor guardian. The successor guardian may settle
2 with the predecessor and receive and receipt for all
3 the portion of the estate as remains in the hands of
4 the successor guardian. The successor guardian may
5 bring suit on the bond or bonds of the predecessor in
6 the guardian's own name and capacity for all the estate
7 that came into the hands of the predecessor and has not
8 been accounted for by the predecessor.

9 Sec. 764. Whenever a guardian shall accept and
10 qualify after letters of guardianship are granted on
11 the estate, the guardian shall, in like manner,
12 succeed to the previous guardian, and the guardian
13 shall administer the estate in like manner as if the
14 administration by the guardian were a continuation of
15 the former one.

16 Revisor's Note

17 Section 763, Texas Probate Code, provides that a
18 successor guardian may settle with the predecessor and
19 receive and give a receipt for the portion of the
20 estate that remains in the possession of the
21 "successor guardian." It is probable that the
22 reference to the estate remaining in the possession of
23 the "successor" is erroneous and that "predecessor"
24 was intended. However, the revised law preserves the
25 ambiguity by retaining the reference to "successor."

26 Revised Law

27 Sec. 1203.203. SUCCESSOR GUARDIAN TO RETURN INVENTORY,
28 APPRAISEMENT, AND LIST OF CLAIMS. (a) A successor guardian who has
29 qualified to succeed a former guardian shall, in the manner
30 required of an original appointee:

31 (1) make and return to the court an inventory,
32 appraisement, and list of claims of the estate not later than the
33 30th day after the date the successor qualifies; and

34 (2) return additional inventories, appraisements, and
35 lists of claims.

36 (b) On the application of any person interested in the
37 estate, the court shall, in an order appointing a successor
38 guardian, appoint an appraiser as in an original appointment of a
39 guardian. (Tex. Prob. Code, Sec. 765.)

40 Source Law

41 Sec. 765. A successor guardian who has qualified
42 to succeed a prior guardian shall make and return to
43 the court an inventory, appraisement, and list of

1	claims of the estate, not later than the 30th day after	
2	the date the successor guardian qualifies as guardian,	
3	in the same manner as is required of an original	
4	appointee. The successor guardian shall in like	
5	manner as is required of an original appointee return	
6	additional inventories, appraisements, and lists of	
7	claims. In all orders appointing a successor	
8	guardian, the court shall appoint an appraiser as in	
9	original appointments on the application of any person	
10	interested in the estate.	
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20		<u>Revised Law</u>	
21	Sec. 1204.001.	SETTLEMENT OF GUARDIANSHIP. (a) A	
22		guardianship shall be settled and closed as provided by this	
23		section and Section 1202.001.	
24		(b) A guardianship of the estate of a ward shall be settled	
25		when:	
26		(1) the ward dies;	
27		(2) a minor ward becomes an adult by:	
28		(A) becoming 18 years of age;	
29		(B) removal of disabilities of minority	
30		according to the law of this state; or	
31		(C) marriage;	
32		(3) an incapacitated ward is decreed as provided by	
33		law to have been restored to full legal capacity;	
34		(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 Source Law

27 Sec. 745. (a) A guardianship of the estate of a
28 ward shall be settled when:

29 (1) a minor ward dies or becomes an adult
30 by becoming 18 years of age, or by removal of
31 disabilities of minority according to the law of this
32 state, or by marriage;

33 (2) an incapacitated ward dies, or is
34 decreed as provided by law to have been restored to
35 full legal capacity;

36 (3) the spouse of a married ward has
37 qualified as survivor in community and the ward owns no
38 separate property;

39 (4) the estate of a ward becomes
40 exhausted;

41 (5) the foreseeable income accruing to a
42 ward or to his estate is so negligible that maintaining

1 the guardianship in force would be burdensome;

2 (6) all of the assets of the estate have
3 been placed in a management trust under Subpart N, Part
4 4, of this code and the court determines that a
5 guardianship for the ward is no longer necessary; or

6 (7) the court determines for any other
7 reason that a guardianship for the ward is no longer
8 necessary.

9 (b) In a case arising under Subsection (a)(5) of
10 this section, the court may authorize the income to be
11 paid to a parent, or other person who has acted as
12 guardian of the ward, to assist in the maintenance of
13 the ward and without liability to account to the court
14 for the income.

15 (c) When the estate of a minor ward consists
16 only of cash or cash equivalents in an amount of
17 \$100,000 or less, the guardianship of the estate may be
18 terminated and the assets paid to the county clerk of
19 the county in which the guardianship proceeding is
20 pending, and the clerk shall manage the funds as
21 provided by Section 887 of this code.

22 (d) In the settlement of a guardianship, the
23 court may appoint an attorney ad litem to represent the
24 interests of the ward, and may allow the attorney
25 reasonable compensation for services provided by the
26 attorney out of the ward's estate.

27 Revisor's Note

28 Section 745, Texas Probate Code, requires a
29 guardianship of the estate to be settled under certain
30 circumstances. Section 694, Texas Probate Code,
31 revised as Section 1202.001 of this code, also
32 provides circumstances under which a guardianship must
33 be settled and closed. The revised law, therefore,
34 adds a reference to Section 1202.001 for the
35 convenience of the reader.

36 Revised Law

37 Sec. 1204.002. APPOINTMENT OF ATTORNEY AD LITEM TO
38 REPRESENT WARD IN FINAL SETTLEMENT UNDER CERTAIN CIRCUMSTANCES.

39 (a) The court may appoint an attorney ad litem to represent the
40 ward's interest in the final settlement with the guardian if:

41 (1) the ward is deceased and there is no executor or
42 administrator of the ward's estate;

43 (2) the ward is a nonresident; or

44 (3) the ward's residence is unknown.

45 (b) The court shall allow the attorney ad litem appointed
46 under this section reasonable compensation out of the ward's estate
47 for any services provided by the attorney. (Tex. Prob. Code, Sec.

1 755.)

2 Source Law

3 Sec. 755. When the ward is dead and there is no
4 executor or administrator of the ward's estate, or when
5 the ward is a nonresident, or the ward's residence is
6 unknown, the court may appoint an attorney ad litem to
7 represent the interest of the ward in the final
8 settlement with the guardian, and shall allow the
9 attorney reasonable compensation out of the ward's
10 estate for any services provided by the attorney.

11 [Sections 1204.003-1204.050 reserved for expansion]

12 SUBCHAPTER B. PAYMENT OF CERTAIN EXPENSES AND DEBTS

13 Revised Law

14 Sec. 1204.051. FUNERAL ARRANGEMENTS AND OTHER DEBTS;
15 ACCOUNT FOR FINAL SETTLEMENT ON COMPLAINT OF PERSONAL
16 REPRESENTATIVE. Before a guardianship of the person or estate of a
17 ward is closed on the ward's death, the guardian may, subject to the
18 court's approval, make all funeral arrangements and pay the funeral
19 expenses and all other debts out of the deceased ward's estate. If
20 a personal representative of the estate of a deceased ward is
21 appointed, the court shall on the written complaint of the personal
22 representative have the guardian of the deceased ward cited to
23 appear and present an account for final settlement as provided by
24 Section 1204.101. (Tex. Prob. Code, Sec. 746.)

25 Source Law

26 Sec. 746. Before the guardianship of a person or
27 estate of a ward is closed on the death of a ward, the
28 guardian, subject to the approval of the court, may
29 make all funeral arrangements, pay for the funeral
30 expenses out of the estate of the deceased ward, and
31 pay all other debts out of the estate. If a personal
32 representative of the estate of a deceased ward is
33 appointed, the court shall on the written complaint of
34 the personal representative cause the guardian to be
35 cited to appear and present a final account as provided
36 in Section 749 of this code.

37 Revisor's Note

38 Section 746, Texas Probate Code, refers to the
39 presentation of "a final account as provided in
40 Section 749," Texas Probate Code. The revised law
41 substitutes a reference to Section 1204.101 because
42 the portion of Section 749, Texas Probate Code, that
43 requires the presentation of an account for final

1 settlement is revised in this chapter as Section
2 1204.101.

3 Revised Law

4 Sec. 1204.052. TAXES AND EXPENSES OF ADMINISTRATION; SALE
5 OF ESTATE PROPERTY. Notwithstanding any other provision of this
6 title, a probate court in which proceedings to declare heirship are
7 maintained may order:

8 (1) the guardian to pay any taxes or expenses of
9 administering the estate; and

10 (2) the sale of property in the ward's estate, when
11 necessary, to:

12 (A) pay the taxes or expenses of administering
13 the estate; or

14 (B) distribute the estate among the heirs. (Tex.
15 Prob. Code, Sec. 748.)

16 Source Law

17 Sec. 748. Notwithstanding any other provision
18 of this chapter, a probate court in which proceedings
19 to declare heirship are maintained may order the
20 payment by the guardian of any and all taxes or
21 expenses of administering the estate and may order the
22 sale of properties in the ward's estate, when
23 necessary, for the purpose of paying the taxes or
24 expenses of administering the estate or for the
25 purpose of distributing the estate among the heirs.

26 Revised Law

27 Sec. 1204.053. INHERITANCE TAXES; LIMITATION ON CLOSING
28 ESTATE. If the guardian has been ordered to pay inheritance taxes
29 under this code, a deceased ward's estate may not be closed unless
30 the account for final settlement shows and the court finds that all
31 inheritance taxes due and owing to this state with respect to all
32 interests and property passing through the guardian's possession
33 have been paid. (Tex. Prob. Code, Sec. 754.)

34 Source Law

35 Sec. 754. If the guardian has been ordered to
36 make payment of inheritance taxes under this code, an
37 estate of a deceased ward may not be closed unless the
38 final account shows and the court finds that all
39 inheritance taxes due and owing to this state with
40 respect to all interests and properties passing
41 through the hands of the guardian have been paid.

1 [Sections 1204.054-1204.100 reserved for expansion]

2 SUBCHAPTER C. ACCOUNT FOR FINAL SETTLEMENT

3 Revised Law

4 Sec. 1204.101. VERIFIED ACCOUNT REQUIRED. A guardian of
5 the estate shall present to the court the guardian's verified
6 account for final settlement when the guardianship of the estate is
7 required to be settled. (Tex. Prob. Code, Sec. 749 (part).)

8 Source Law

9 Sec. 749. When a guardianship of the estate is
10 required to be settled, the guardian shall present to
11 the court the guardian's verified account for final
12 settlement. . . .

13 Revised Law

14 Sec. 1204.102. CONTENTS OF ACCOUNT. (a) Except as provided
15 by Subsection (b), it is sufficient for an account for final
16 settlement to:

17 (1) refer to the inventory without describing each
18 item of property in detail; and

19 (2) refer to and adopt any guardianship proceeding
20 concerning sales, renting, leasing for mineral development, or any
21 other transaction on behalf of the guardianship estate, including
22 an exhibit, account, or voucher previously filed and approved,
23 without restating the particular items.

24 (b) An account for final settlement shall be accompanied by
25 proper vouchers supporting each item included in the account for
26 which the guardian has not already accounted and, either by
27 reference to any proceeding described by Subsection (a) or by a
28 statement of the facts, must show:

29 (1) the property, rents, revenues, and profits
30 received by the guardian, and belonging to the ward, during the term
31 of the guardianship;

32 (2) the disposition made of the property, rents,
33 revenues, and profits;

34 (3) any expenses and debts against the estate that
35 remain unpaid;

36 (4) any estate property that remains in the guardian's

1 possession;

2 (5) that the guardian has paid all required bond
3 premiums;

4 (6) the tax returns the guardian has filed during the
5 guardianship;

6 (7) the amount of taxes the ward owed during the
7 guardianship that the guardian has paid;

8 (8) a complete account of the taxes the guardian has
9 paid during the guardianship, including:

10 (A) the amount of the taxes;

11 (B) the date the guardian paid the taxes; and

12 (C) the name of the governmental entity to which
13 the guardian paid the taxes;

14 (9) a description of all current delinquencies in the
15 filing of tax returns and the payment of taxes, including a reason
16 for each delinquency; and

17 (10) other facts as appear necessary to a full and
18 definite understanding of the exact condition of the guardianship.
19 (Tex. Prob. Code, Sec. 749 (part).)

20 Source Law

21 Sec. 749. . . . In the account it shall be
22 sufficient to refer to the inventory without
23 describing each item of property in detail and to refer
24 to and adopt any and all guardianship proceedings that
25 concern sales, renting or hiring, leasing for mineral
26 development, or any other transaction on behalf of the
27 guardianship estate, including an exhibit, account, or
28 voucher previously filed and approved, without
29 restating the particular items. Each final account
30 shall be accompanied by proper vouchers in support of
31 each item not already accounted for and shall show,
32 either by reference to any proceedings authorized
33 above or by statement of the facts:

34 (1) the property, rents, revenues, and
35 profits received by the guardian, and belonging to the
36 ward, during the term of the guardianship;

37 (2) the disposition made of the property,
38 rents, revenues, and profits;

39 (3) the expenses and debts against the
40 estate that remain unpaid, if any;

41 (4) the property of the estate that
42 remains in the hands of the guardian, if any;

43 (5) that the guardian has paid all
44 required bond premiums;

45 (6) the tax returns the guardian has filed
46 during the guardianship;

47 (7) the amount of taxes the ward owed
48 during the guardianship that the guardian has paid;

1 (8) a complete account of the taxes the
2 guardian has paid during the guardianship, including
3 the amount of the taxes, the date the guardian paid the
4 taxes, and the name of the governmental entity to which
5 the guardian paid the taxes;

6 (9) a description of all current
7 delinquencies in the filing of tax returns and the
8 payment of taxes and a reason for each delinquency; and

9 (10) other facts as appear necessary to a
10 full and definite understanding of the exact condition
11 of the guardianship.

12 Revisor's Note

13 (1) Section 749, Texas Probate Code, refers to
14 guardianship proceedings that concern "renting or
15 hiring," meaning the renting or hiring of guardianship
16 estate property. The revised law omits the reference
17 to "hiring" because "hiring" property is synonymous
18 with "renting" property, and "renting" property is
19 more consistent with modern usage. In addition,
20 "renting" is consistent with the terminology used in
21 Chapter 1159 of this code, which is the revision of
22 Sections 839-846, Texas Probate Code, relating to the
23 renting of guardianship estate property.

24 (2) Section 749(4), Texas Probate Code, refers
25 to property in the guardian's "hands." Throughout this
26 chapter, the revised law substitutes "possession" for
27 "hands" because the terms are synonymous in context
28 and "possession" is more consistent with modern usage.

29 Revised Law

30 Sec. 1204.103. CERTAIN DEBTS EXCLUDED FROM SETTLEMENT
31 COMPUTATION. In the settlement of any of the accounts of the
32 guardian of the estate, all debts due the estate that the court is
33 satisfied could not have been collected by due diligence and that
34 have not been collected shall be excluded from the computation.
35 (Tex. Prob. Code, Sec. 756.)

36 Source Law

37 Sec. 756. In the settlement of any of the
38 accounts of the guardian of an estate, all debts due
39 the estate that the court is satisfied could not have
40 been collected by due diligence, and that have not been
41 collected, shall be excluded from the computation.

1 Revised Law

2 Sec. 1204.104. GUARDIAN TO ACCOUNT FOR WARD'S LABOR OR
3 SERVICES. (a) Subject to Subsection (b), the guardian of a ward
4 shall account for:

5 (1) the reasonable value of labor or services provided
6 by the ward; or

7 (2) the proceeds of labor or services provided by the
8 ward.

9 (b) The guardian is entitled to reasonable credits for the
10 board, clothing, and maintenance of the ward. (Tex. Prob. Code,
11 Sec. 757.)

12 Source Law

13 Sec. 757. The guardian of a ward shall account
14 for the reasonable value of the labor or services of
15 the ward of the guardian, or the proceeds of the labor
16 or services, if the labor or services have been
17 rendered by the ward, but the guardian is entitled to
18 reasonable credits for the board, clothing, and
19 maintenance of the ward.

20 Revised Law

21 Sec. 1204.105. CITATION AND NOTICE ON PRESENTATION OF
22 ACCOUNT. (a) On presentation of an account for final settlement by
23 a guardian of the estate of a ward, the county clerk shall issue
24 citation to the persons and in the manner provided by this section.

25 (b) Citation issued under Subsection (a) must contain:

26 (1) a statement that an account for final settlement
27 has been presented;

28 (2) the time and place the court will consider the
29 account; and

30 (3) a statement requiring the person cited to appear
31 and contest the account, if the person determines contesting the
32 account is proper.

33 (c) Except as provided by Subsection (d) or (e), the county
34 clerk shall:

35 (1) issue a citation to be personally served on a ward
36 if:

37 (A) the ward is 14 years of age or older;

1 (B) the ward is a living resident of this state;
2 and

3 (C) the ward's residence is known;

4 (2) issue a citation to be personally served on the
5 executor or administrator of a deceased ward's estate, if one has
6 been appointed; and

7 (3) issue a citation to a ward or the ward's estate by
8 publication, or by posting if directed by written court order, if:

9 (A) the ward's residence is unknown;

10 (B) the ward is not a resident of this state; or

11 (C) the ward is deceased and no representative of
12 the ward's estate has been appointed and has qualified in this
13 state.

14 (d) The ward, in person or by attorney, may waive by writing
15 filed with the county clerk the issuance and personal service of
16 citation required by Subsection (c)(1).

17 (e) Service of citation is not required under Subsection
18 (c)(2) if the executor or administrator is the same person as the
19 guardian.

20 (f) The court may allow the waiver of notice of an account
21 for final settlement in a guardianship proceeding.

22 (g) The court by written order shall require additional
23 notice if the court considers the additional notice necessary.
24 (Tex. Prob. Code, Sec. 751.)

25 Source Law

26 Sec. 751. (a) On the filing of an account for
27 final settlement by a guardian of the estate of a ward,
28 citation must contain a statement that the final
29 account has been filed, the time and place when it will
30 be considered by the court, and a statement requiring
31 the person cited to appear and contest the final
32 account if the person determines it is proper. The
33 county clerk shall issue the citation to the following
34 persons and in the manner provided by this section.

35 (b) If a ward is a living resident of this state
36 who is 14 years of age or older, and the ward's
37 residence is known, the ward shall be cited by personal
38 service, unless the ward, in person or by attorney, by
39 writing filed with the clerk, waives the issuance and
40 personal service of citation.

41 (c) If one who has been a ward is deceased, the
42 ward's executor or administrator, if one has been
43 appointed, shall be personally served, but no service

1 is required if the executor or administrator is the
2 same person as the guardian.

3 (d) If a ward's residence is unknown, or if the
4 ward is a nonresident of this state, or if the ward is
5 deceased and no representative of the ward's estate has
6 been appointed and qualified in this state, the
7 citation to the ward or to the ward's estate shall be by
8 publication, unless the court by written order directs
9 citation by posting.

10 (e) If the court deems further additional notice
11 necessary, it shall require the additional notice by
12 written order. In its discretion, the court may allow
13 the waiver of notice of an account for final settlement
14 in a guardianship proceeding.

15 Revisor's Note

16 Section 751(a), Texas Probate Code, refers to the
17 "filing of" an account for final settlement and
18 requires the issuance of citation containing a
19 statement that the account has been "filed." Section
20 749, Texas Probate Code, revised in relevant part as
21 Section 1204.101 of this chapter, requires a guardian
22 to "present" an account for final settlement when the
23 guardianship of the estate is to be settled.
24 Furthermore, other portions of Subpart C, Part 4,
25 Chapter XIII, Texas Probate Code, revised in this
26 chapter and of which Section 751 is a part, also refer
27 to the "presentation of" an account for final
28 settlement. In context, the terms "presentation" and
29 "filing" are synonymous. For consistency of
30 terminology throughout this chapter, the revised law
31 substitutes "presentation of" for "filing of" and
32 substitutes "presented" for "filed." Similar changes
33 are made throughout this chapter.

34 Revised Law

35 Sec. 1204.106. EXAMINATION OF AND HEARING ON ACCOUNT. (a)
36 On the court's satisfaction that citation has been properly served
37 on all persons interested in the guardianship estate, the court
38 shall examine the account for final settlement and the accompanying
39 vouchers.

40 (b) After hearing all exceptions or objections to the
41 account and evidence in support of or against the account, the court

shall audit and settle the account and, if necessary, restate the account. (Tex. Prob. Code, Sec. 752(a).)

Source Law

Sec. 752. (a) On being satisfied that citation has been duly served on all persons interested in the estate, the court shall examine the account for final settlement and the vouchers accompanying the account. After hearing all exceptions or objections to the account and evidence in support of or against the account, the court shall audit and settle the same, and restate it if that is necessary.

Revisor's Note

(1) Section 752(a), Texas Probate Code, refers to a citation that has been "duly served." The revised law substitutes "properly" for "duly" because the terms are synonymous in context and "properly" is more consistent with modern usage.

(2) Section 752(a), Texas Probate Code, requires the court to examine the account for final settlement and the vouchers accompanying the account when the court is satisfied that all persons interested in "the estate" have been served with citation. The citation to which Section 752 refers is issued under Section 751, Texas Probate Code, revised as Section 1204.105 of this chapter. Under Section 751, the citation is issued when "a guardian of the estate of a ward" files an account for final settlement. Because it is clear from the combined context of Sections 751 and 752 that the estate to which Sections 751 and 752 refer is a guardianship estate, as opposed to the estate of a decedent, and because Section 601(9), Texas Probate Code, revised as Section 1002.010 of this code, provides that "estate" and "guardianship estate" have the same meaning, the revised law substitutes "guardianship estate" for "estate."

Revised Law

Sec. 1204.107.	ASSETS	BECOMING	DUE	PENDING	FINAL
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1 SETTLEMENT; RECEIPT AND DISCHARGE. (a) This section does not apply
2 to money or another thing of value held under Section 1105.153.

3 (b) Until the order of final discharge of the guardian is
4 entered in the judge's guardianship docket, money or another thing
5 of value falling due to the ward or the ward's estate while the
6 account for final settlement is pending may be paid or tendered to
7 the emancipated ward, the guardian, or the personal representative
8 of the deceased ward's estate. The ward, guardian, or personal
9 representative to whom the money or other thing of value is paid or
10 tendered shall issue a receipt for the money or other thing of
11 value, and the obligor or payor is discharged of the obligation for
12 all purposes. (Tex. Prob. Code, Sec. 753.)

13 Source Law

14 Sec. 753. Money or any other thing of value
15 falling due to the estate or ward while the account for
16 final settlement is pending, other than money or any
17 other thing of value held under Section 703(c) of this
18 code, until the order of final discharge of the
19 guardian is entered in the judge's guardianship
20 docket, may be paid, delivered, or tendered to the
21 emancipated ward, the guardian, or the personal
22 representative of the deceased ward's estate, who
23 shall issue a receipt for the money or other thing of
24 value, and the obligor or payor shall be discharged of
25 the obligation for all purposes.

26 Revisor's Note

27 Section 753, Texas Probate Code, provides that
28 "[m]oney or any other thing of value . . . may be paid,
29 delivered, or tendered." The revised law omits
30 "delivered" as unnecessary because, in this context,
31 the meaning of "delivered" is included within the
32 meaning of "paid." Black's Law Dictionary (revised
33 eighth edition, 2004) defines "payment" as the
34 "[p]erformance of an obligation by the delivery of
35 money or some other valuable thing accepted in partial
36 or full discharge of the obligation."

37 Revised Law

38 Sec. 1204.108. DELIVERY OF WARD'S PROPERTY IN POSSESSION OF
39 GUARDIAN OF THE PERSON ON SETTLEMENT OF GUARDIANSHIP OF THE ESTATE.
40 (a) If the guardianship of a ward is required to be settled as

1 provided by Section 1204.001, the guardian of the person shall
2 deliver all of the ward's property in the guardian's possession or
3 control to the emancipated ward or other person entitled to the
4 property. If the ward is deceased, the guardian shall deliver the
5 property to the personal representative of the deceased ward's
6 estate or other person entitled to the property.

7 (b) If none of the ward's property is in the guardian of the
8 person's possession or control, the guardian shall, not later than
9 the 60th day after the date the guardianship is required to be
10 settled, file with the court a sworn affidavit that states:

11 (1) the reason the guardianship was terminated; and

12 (2) to whom the ward's property in the guardian's
13 possession was delivered.

14 (c) The judge may issue orders as necessary for the best
15 interests of the ward or the deceased ward's estate.

16 (d) This section does not discharge a guardian of the person
17 from liability for breach of the guardian's fiduciary duties.

18 (Tex. Prob. Code, Sec. 747.)

19 Source Law

20 Sec. 747. (a) When the guardianship of an
21 incapacitated person is required to be settled as
22 provided by Section 745 of this code, the guardian of
23 the person shall deliver all property of the ward in
24 the possession or control of the guardian to the
25 emancipated ward or other person entitled to the
26 property. If the ward is deceased, the guardian shall
27 deliver the property to the personal representative of
28 the deceased ward's estate or other person entitled to
29 the property.

30 (b) If there is no property of the ward in the
31 possession or control of the guardian of the person,
32 the guardian shall, not later than the 60th day after
33 the date on which the guardianship is required to be
34 settled, file with the court a sworn affidavit that
35 states the reason the guardianship was terminated and
36 to whom the property of the ward in the guardian's
37 possession was delivered. The judge may issue orders
38 as necessary for the best interests of the ward or of
39 the estate of a deceased ward. This section does not
40 discharge a guardian of the person from liability for
41 breach of the guardian's fiduciary duties.

42 Revisor's Note

43 Section 747(a), Texas Probate Code, refers to the
44 guardianship of "an incapacitated person." Section
45 601(31), Texas Probate Code, which is revised as

1 Section 1002.030 of this code, defines "ward" as a
2 person for whom a guardian has been appointed. The
3 revised law therefore substitutes "a ward" for the
4 quoted language for consistency of terminology
5 throughout this title.

6 Revised Law

7 Sec. 1204.109. DELIVERY OF REMAINING ESTATE PROPERTY. On
8 final settlement of a guardianship estate, the court shall order
9 that any part of the estate that remains in the guardian's
10 possession be delivered to:

11 (1) the ward;

12 (2) the personal representative of the ward's estate,
13 if the ward is deceased and a personal representative has been
14 appointed; or

15 (3) any other person legally entitled to the estate.

16 (Tex. Prob. Code, Sec. 752(b).)

17 Source Law

18 (b) On final settlement of an estate, if there
19 is any part of the estate remaining in the hands of the
20 guardian, the court shall order that it be delivered,
21 in case of a ward, to the ward, or in the case of a
22 deceased ward, to the personal representative of the
23 deceased ward's estate if one has been appointed, or to
24 any other person legally entitled to the estate.

25 [Sections 1204.110-1204.150 reserved for expansion]

26 SUBCHAPTER D. CLOSING OF GUARDIANSHIP AND DISCHARGE OF GUARDIAN

27 Revised Law

28 Sec. 1204.151. DISCHARGE OF GUARDIAN WHEN NO ESTATE
29 PROPERTY REMAINS. The court shall enter an order discharging a
30 guardian from the guardian's trust and closing the guardianship
31 estate if, on final settlement of the estate, none of the estate
32 remains in the guardian's possession. (Tex. Prob. Code, Sec.
33 752(c).)

34 Source Law

35 (c) If on final settlement of an estate there is
36 no part of the estate remaining in the hands of the
37 guardian, the court shall discharge the guardian from
38 the guardian's trust and order the estate closed.

1 Revised Law

2 Sec. 1204.152. DISCHARGE OF GUARDIAN WHEN ESTATE FULLY
3 ADMINISTERED. The court shall enter an order discharging a
4 guardian of the estate from the guardian's trust and declaring the
5 estate closed when:

6 (1) the guardian has fully administered the estate in
7 accordance with this title and the court's orders;

8 (2) the guardian's account for final settlement has
9 been approved; and

0 (3) the guardian has delivered all of the estate
1 remaining in the guardian's possession to any person entitled to
2 receive the estate. (Tex. Prob. Code, Sec. 752(d).)

3 Source Law

(d) When the guardian of an estate has fully administered the estate in accordance with this chapter and the orders of the court and the guardian's final account has been approved, and the guardian has delivered all of the estate remaining in the guardian's hands to any person entitled to receive the estate, the court shall enter an order discharging the guardian from the guardian's trust, and declaring the estate closed.

23 [Sections 1204.153-1204.200 reserved for expansion]

24 SUBCHAPTER E. FAILURE OF GUARDIAN TO ACT

25 Revised Law

26 Sec. 1204.201. FAILURE TO PRESENT FINAL ACCOUNT OR REPORT.

(a) The court may, on the court's own motion, and shall, on the written complaint of the emancipated ward or anyone interested in the ward or the ward's estate, have the guardian who is charged with the duty of presenting a final account or report cited to appear and present the account or report within the time specified in the citation if the guardian failed or neglected to present the account or report at the proper time.

(b) If a written complaint has not been filed by anyone interested in the guardianship of the person or estate of a minor or deceased ward, on or after the third anniversary of the date the minor ward reaches the age of majority or the date the ward dies, as applicable, the court may remove the estate from the court's active

1 docket without a final accounting and without appointing a
2 successor personal representative.

3 (c) If a complaint has not been filed by anyone interested
4 in the estate of a ward whose whereabouts are unknown to the court,
5 on or after the fourth anniversary of the date the ward's
6 whereabouts became unknown to the court, the court may remove the
7 estate from the court's active docket without a final accounting
8 and without appointing a successor personal representative. (Tex.
9 Prob. Code, Sec. 750.)

10 Source Law

11 Sec. 750. (a) If a guardian charged with the
12 duty of filing a final account or report fails or
13 neglects so to do at the proper time, the court may, on
14 the court's own motion, or on the written complaint of
15 the emancipated ward or anyone interested in the ward
16 or the ward's estate, shall cause the guardian to be
17 cited to appear and present the account or report
18 within the time specified in the citation.

19 (b) If a written complaint has not been filed by
20 anyone interested in the guardianship of a person or
21 estate of a minor or deceased ward, the court may, on
22 or after the third anniversary after the date of the
23 death of the ward or after the date the minor reaches
24 the age of majority, remove the estate from the court's
25 active docket without a final accounting and without
26 appointing a successor personal representative.

27 (c) If a complaint has not been filed by anyone
28 interested in the estate of a ward whose whereabouts
29 are unknown to the court, the court may, on or after
30 the fourth anniversary after the ward's whereabouts
31 became unknown to the court, remove the estate from the
32 court's active docket without a final accounting and
33 without appointing a successor personal
34 representative.

35 Revised Law

36 Sec. 1204.202. LIABILITY FOR FAILURE TO DELIVER ESTATE
37 PROPERTY. (a) On final settlement or termination of the
38 guardianship of the estate, if the guardian neglects when legally
39 demanded to deliver a portion of the estate or any funds or money in
40 the guardian's possession ordered to be delivered to a person
41 entitled to that property, the person may file with the court clerk
42 a written complaint alleging:

- 43 (1) the fact of the neglect;
44 (2) the date of the person's demand; and
45 (3) other relevant facts.

46 (b) After the filing of a complaint under Subsection (a),

1 the court clerk shall issue a citation to be served personally on
2 the guardian. The citation must:

3 (1) apprise the guardian of the complaint; and

4 (2) cite the guardian to appear before the court and
5 answer, if the guardian desires, at a time designated in the
6 citation.

7 (c) If at the hearing the court finds that the citation was
8 properly served and returned, and that the guardian is guilty of the
9 neglect charged, the court shall enter an order to that effect.

10 (d) If the court enters an order under Subsection (c), the
11 guardian is liable to the person who filed the complaint under
12 Subsection (a) for damages at the rate of 10 percent of the amount
13 or appraised value of the money or estate withheld, per month, for
14 each month or fraction of a month that the estate or money of a
15 guardianship of the estate, or on termination of guardianship of
16 the person, or funds is or has been withheld by the guardian after
17 the date of demand. Damages under this subsection may be recovered
18 in any court of competent jurisdiction. (Tex. Prob. Code, Sec.
19 758.)

20 Source Law

21 Sec. 758. If a guardian, on final settlement or
22 termination of the guardianship of the estate,
23 neglects to deliver to the person entitled when
24 legally demanded any portion of the estate or any funds
25 or money in the hands of the guardian ordered to be
26 delivered, a person entitled to the estate, funds, or
27 money may file with the clerk of the court a written
28 complaint alleging the fact of the guardian's neglect,
29 the date of the person's demand, and other relevant
30 facts. After the person files a complaint under this
31 section, the clerk shall issue a citation to be served
32 personally on the guardian, appraising the guardian of
33 the complaint and citing the guardian to appear before
34 the court and answer, if the guardian desires, at the
35 time designated in the citation. If at the hearing the
36 court finds that the citation was duly served and
37 returned and that the guardian is guilty of the neglect
38 charged, the court shall enter an order to that effect,
39 and the guardian shall be liable to the person who
40 filed the complaint in damages at the rate of 10
41 percent of the amount or appraised value of the money
42 or estate withheld, per month, for each month or
43 fraction of a month that the estate or money of a
44 guardianship of the estate, or on termination of
45 guardianship of the person, or funds is or has been
46 withheld by the guardian after the date of demand,
47 which damages may be recovered in any court of
48 competent jurisdiction.

1	<u>Revisor's Note</u>	
2	(1)	Section 758, Texas Probate Code, provides
3		that after a person has filed a complaint "the clerk
4		shall issue a citation . . . appraising the guardian
5		of the complaint and citing the guardian to appear
6		before the court and answer." The revised law
7		substitutes "apprise" for "appraising" because it is
8		clear from the context of Section 758, Texas Probate
9		Code, that the citation is intended to notify the
10		guardian of the complaint, and "apprise" means "to
11		give notice to," while "appraise" means "to set a value
12		on." Merriam-Webster's Collegiate Dictionary
13		(eleventh edition, 2006).
14	(2)	Section 758, Texas Probate Code, refers to a
15		citation that has been "duly served." The revised law
16		substitutes "properly" for "duly" for the reason
17		stated in Revisor's Note (1) to Section 1204.106 of
18		this chapter.
19		[Chapters 1205-1250 reserved for expansion]
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23	<u>Revised Law</u>		
24	Sec. 1251.001.	APPOINTMENT OF TEMPORARY GUARDIAN. (a) A	
25		court shall appoint a temporary guardian, with limited powers as	
26		the circumstances of the case require, if the court:	
27	(1)	is presented with substantial evidence that a	
28		person may be an incapacitated person; and	
29	(2)	has probable cause to believe that the person, the	
30		person's estate, or both require the immediate appointment of a	
31		guardian.	
32	(b)	The person for whom a temporary guardian is appointed	
33		under this chapter retains all rights and powers that are not	
34		specifically granted to the person's temporary guardian by court	

1 order. (Tex. Prob. Code, Secs. 875(a), (b).)

2 Source Law

3 Sec. 875. (a) If a court is presented with
4 substantial evidence that a person may be a minor or
5 other incapacitated person, and the court has probable
6 cause to believe that the person or person's estate, or
7 both, requires the immediate appointment of a
8 guardian, the court shall appoint a temporary guardian
9 with limited powers as the circumstances of the case
10 require.

11 (b) The person retains all rights and powers
12 that are not specifically granted to the person's
13 temporary guardian by court order.

14 Revisor's Note

15 Section 875(a), Texas Probate Code, refers to "a
16 minor or other incapacitated person." Throughout this
17 chapter the revised law omits the references to "a
18 minor" as unnecessary in this context because Section
19 601(14), Texas Probate Code, revised in this title as
20 Section 1002.017, defines "incapacitated person" to
21 include a minor.

22 Revised Law

23 Sec. 1251.002. NO PRESUMPTION OF INCAPACITY. A person for
24 whom a temporary guardian is appointed under this chapter may not be
25 presumed to be incapacitated. (Tex. Prob. Code, Sec. 874.)

26 Source Law

27 Sec. 874. The person for whom a temporary
28 guardian is appointed under Section 875 of this code
29 may not be presumed to be incapacitated.

30 Revisor's Note

31 Section 874, Texas Probate Code, refers to a
32 temporary guardian "appointed under Section 875 of
33 this code," meaning Section 875, Texas Probate Code.
34 Section 875 is revised in various provisions of this
35 chapter, and the revised law is drafted accordingly.

36 Revised Law

37 Sec. 1251.003. APPLICATION. (a) A sworn, written
38 application for the appointment of a temporary guardian shall be
39 filed before the court appoints a temporary guardian.

40 (b) The application must state:

1 Source Law

2 (d) On the filing of an application for
3 temporary guardianship, the court shall appoint an
4 attorney to represent the proposed ward in all
5 guardianship proceedings in which independent counsel
6 has not been retained by or on behalf of the proposed
7 ward.

8 Revised Law

9 Sec. 1251.005. NOTICE OF APPLICATION. (a) On the filing of
10 an application for temporary guardianship, the clerk shall issue
11 notice to be served on:

- 12 (1) the proposed ward;
13 (2) the proposed ward's appointed attorney; and
14 (3) the proposed temporary guardian named in the
15 application, if that person is not the applicant.

16 (b) The notice must describe:
17 (1) the rights of the parties; and
18 (2) the date, time, place, purpose, and possible
19 consequences of a hearing on the application.

20 (c) A copy of the application must be attached to the
21 notice. (Tex. Prob. Code, Sec. 875(e).)

22 Source Law

23 (e) On the filing of an application for
24 temporary guardianship, the clerk shall issue notice
25 that shall be served on the respondent, the
26 respondent's appointed attorney, and the proposed
27 temporary guardian named in the application, if that
28 person is not the applicant. The notice must describe
29 the rights of the parties and the date, time, place,
30 purpose, and possible consequences of a hearing on the
31 application. A copy of the application must be
32 attached to the notice.

33 Revisor's Note

34 Section 875(e), Texas Probate Code, refers to
35 "the respondent" and "the respondent's" appointed
36 attorney. Throughout this chapter, the revised law
37 substitutes "proposed ward" for "respondent" for
38 consistency of terminology because it is clear from
39 the context of Section 875 that the "respondent" is the
40 proposed ward for whom an application for temporary
41 guardianship has been filed. For example, Section

1 875(d), Texas Probate Code, provides that an attorney
2 shall be appointed to represent the proposed ward and
3 Section 875(e) refers to that attorney.

4 Revised Law

5 Sec. 1251.006. SCHEDULING OF HEARING. (a) Immediately
6 after an application for a temporary guardianship is filed, the
7 court shall issue an order setting a certain date for the hearing on
8 the application.

9 (b) Unless postponed as provided by Subsection (c), a
10 hearing shall be held not later than the 10th day after the date the
11 application for temporary guardianship is filed.

12 (c) The proposed ward or the proposed ward's attorney may
13 consent to postpone the hearing on the application for temporary
14 guardianship for a period not to exceed 30 days after the date the
15 application is filed.

16 (d) An application for temporary guardianship takes
17 precedence over all matters except older matters of the same
18 character. (Tex. Prob. Code, Secs. 875(f)(1) (part), (2), (3),
19 (4).)

20 Source Law

21 (f)(1) A hearing shall be held not later than
22 the 10th day after the date of the filing of the
23 application for temporary guardianship unless the
24 hearing date is postponed as provided by Subdivision
25 (2) of this subsection. . . .

26 (2) The respondent or the respondent's
27 attorney may consent to postpone the hearing on the
28 application for temporary guardianship for a period
29 not to exceed 30 days after the date of the filing of
30 the application.

31 (3) Every application for temporary
32 guardianship takes precedence over all matters except
33 older matters of the same character.

34 (4) Immediately after an application for
35 temporary guardianship is filed, the court shall issue
36 an order that sets a certain date for hearing on the
37 application for temporary guardianship.

38 Revised Law

39 Sec. 1251.007. MOTION FOR DISMISSAL OF APPLICATION. (a)
40 Subject to Subsection (b), the proposed ward or the proposed ward's
41 attorney may appear and move for the dismissal of the application
42 for temporary guardianship.

1 (b) At least one day before making a motion under Subsection
2 (a), the proposed ward or the proposed ward's attorney shall
3 provide notice to the party who filed the application for temporary
4 guardianship.

5 (c) If a motion is made for dismissal of the application for
6 temporary guardianship, the court shall hear and determine the
7 motion as expeditiously as justice requires. (Tex. Prob. Code,
8 Sec. 875(f)(5).)

9 Source Law

10 (5) On one day's notice to the party who
11 filed the application for temporary guardianship, the
12 respondent or the respondent's attorney may appear and
13 move for the dismissal of the application for
14 temporary guardianship. If a motion is made for
15 dismissal of the application for temporary
16 guardianship, the court shall hear and determine the
17 motion as expeditiously as the ends of justice
18 require.

19 Revised Law

20 Sec. 1251.008. RIGHTS OF PROPOSED WARD AT HEARING. At a
21 hearing under this subchapter, the proposed ward has the right to:

- 22 (1) receive prior notice;
23 (2) be represented by counsel;
24 (3) be present;
25 (4) present evidence;
26 (5) confront and cross-examine witnesses; and
27 (6) a closed hearing if requested by the proposed ward
28 or the proposed ward's attorney. (Tex. Prob. Code, Sec. 875(f)(1)
29 (part).)

30 Source Law

31 (f)(1) . . . At a hearing under this section,
32 the respondent has the right to:
33 (A) receive prior notice;
34 (B) have representation by counsel;
35 (C) be present;
36 (D) present evidence and confront and
37 cross-examine witnesses; and
38 (E) a closed hearing if requested by
39 the respondent or the respondent's attorney.

40 Revisor's Note

41 Section 875(f)(1), Texas Probate Code, refers to
42 "a hearing under this section," meaning Section 875,

1 Texas Probate Code. The relevant part of Section 875
2 that relates to a hearing on an application for a
3 temporary guardianship is revised in this subchapter.
4 The revised law is drafted accordingly.

5 Revised Law

6 Sec. 1251.009. APPEARANCE BY PROPOSED TEMPORARY GUARDIAN IN
7 CERTAIN CIRCUMSTANCES. If the applicant for a temporary
8 guardianship is not the proposed temporary guardian, a temporary
9 guardianship may not be granted before a hearing on the application
10 required by Section 1251.006(b) unless the proposed temporary
11 guardian appears in court. (Tex. Prob. Code, Sec. 875(f)(6).)

12 Source Law

13 (6) If the applicant is not the proposed
14 temporary guardian, a temporary guardianship may not
15 be granted before a hearing on the application
16 required by Subdivision (1) of this subsection unless
17 the proposed temporary guardian appears in court.

18 Revisor's Note

19 Section 875(f)(6), Texas Probate Code, refers to
20 "a hearing on the application required by Subdivision
21 (1) of this subsection," meaning Section 875(f)(1),
22 Texas Probate Code. The relevant part of Section
23 875(f)(1) that relates to a hearing on an application
24 for a temporary guardianship is revised in this
25 chapter as Section 1251.006(b). The revised law is
26 drafted accordingly.

27 Revised Law

28 Sec. 1251.010. ORDER APPOINTING TEMPORARY GUARDIAN. (a)
29 The court shall appoint a temporary guardian by written order if, at
30 the conclusion of the hearing required by Section 1251.006(b), the
31 court determines that the applicant has established that there is
32 substantial evidence that the proposed ward is an incapacitated
33 person, that there is imminent danger that the proposed ward's
34 physical health or safety will be seriously impaired, or that the
35 proposed ward's estate will be seriously damaged or dissipated
36 unless immediate action is taken.

1 (b) The court shall assign to the temporary guardian only
2 those powers and duties that are necessary to protect the proposed
3 ward against the imminent danger shown.

4 (c) The order appointing the temporary guardian must
5 describe:

6 (1) the reasons for the temporary guardianship; and

7 (2) the powers and duties of the temporary guardian.

8 (Tex. Prob. Code, Sec. 875(g) (part).)

9 Source Law

10 (g) If at the conclusion of the hearing required
11 by Subsection (f)(1) of this section the court
12 determines that the applicant has established that
13 there is substantial evidence that the person is a
14 minor or other incapacitated person, that there is
15 imminent danger that the physical health or safety of
16 the respondent will be seriously impaired, or that the
17 respondent's estate will be seriously damaged or
18 dissipated unless immediate action is taken, the court
19 shall appoint a temporary guardian by written order.
20 The court shall assign to the temporary guardian only
21 those powers and duties that are necessary to protect
22 the respondent against the imminent danger shown.
23 . . . The reasons for the temporary guardianship and
24 the powers and duties of the temporary guardian must be
25 described in the order of appointment.

26 Revisor's Note

27 Section 875(g), Texas Probate Code, requires the
28 court to appoint a temporary guardian if the applicant
29 establishes that there is substantial evidence that
30 the "person" is an incapacitated person. The revised
31 law substitutes "proposed ward" for the reference to
32 "person" for consistency of terminology in this
33 chapter and because it is clear from the context of
34 Section 875(g) that the referenced "person" is the
35 proposed ward for whom the temporary guardianship is
36 sought by the applicant.

37 Revised Law

38 Sec. 1251.011. CERTAIN AGENCY AS TEMPORARY GUARDIAN. A
39 court may not ordinarily appoint the Department of Aging and
40 Disability Services as a temporary guardian under this chapter.
41 The appointment of the department as a temporary guardian under
42 this chapter should be made only as a last resort. (Tex. Prob.

1 Code, Sec. 875(j).)

2 Source Law

3 (j) The court may not customarily or ordinarily
4 appoint the Department of Aging and Disability
5 Services as a temporary guardian under this
6 section. The appointment of the department as a
7 temporary guardian under this section should be made
8 only as a last resort.

9 Revisor's Note

10 Section 875(j), Texas Probate Code, provides that
11 a court may not "customarily or ordinarily" appoint a
12 certain agency as a temporary guardian. The revision
13 omits "customarily" as unnecessary because in this
14 context, "ordinarily" and "customarily" are
15 synonymous.

16 Revised Law

17 Sec. 1251.012. TEMPORARY GUARDIAN'S BOND. The court shall
18 set bond for a temporary guardian according to Chapter 1105. (Tex.
19 Prob. Code, Sec. 875(g) (part).)

20 Source Law

21 (g) . . . The court shall set bond according to
22 Subpart B, Part 3, of this chapter. . . .

23 Revised Law

24 Sec. 1251.013. COURT COSTS. If the court appoints a
25 temporary guardian after the hearing required by Section
26 1251.006(b), all court costs, including attorney's fees, may be
27 assessed as provided by Sections 1155.051, 1155.151, and 665B.
28 (Tex. Prob. Code, Sec. 875(i).)

29 Source Law

30 (i) If the court appoints a temporary guardian
31 after the hearing required by Subsection (f)(1) of
32 this section, all court costs, including attorney's
33 fees, may be assessed as provided in Section 665A,
34 665B, or 669 of this code.

35 [Sections 1251.014-1251.050 reserved for expansion]

36 SUBCHAPTER B. TEMPORARY GUARDIANSHIP PENDING CHALLENGE OR CONTEST
37 OF CERTAIN GUARDIANSHIP APPLICATIONS

38 Revised Law

39 Sec. 1251.051. AUTHORITY TO APPOINT TEMPORARY GUARDIAN OR

1 GRANT RESTRAINING ORDER. The court, on the court's own motion or on
2 the motion of any interested party, may appoint a temporary
3 guardian or grant a temporary restraining order under Rule 680,
4 Texas Rules of Civil Procedure, or both, without issuing additional
5 citation if:

6 (1) an application for a temporary guardianship, for
7 the conversion of a temporary guardianship to a permanent
8 guardianship, or for a permanent guardianship is challenged or
9 contested; and

10 (2) the court finds that the appointment or the
11 issuance of the order is necessary to protect the proposed ward or
12 the proposed ward's estate. (Tex. Prob. Code, Sec. 875(k).)

13 Source Law

14 (k) If an application for a temporary
15 guardianship, for the conversion of a temporary
16 guardianship to a permanent guardianship, or for a
17 permanent guardianship is challenged or contested, the
18 court, on the court's own motion or on the motion of any
19 interested party, may appoint a temporary guardian or
20 grant a temporary restraining order under Rule 680,
21 Texas Rules of Civil Procedure, or both, without
22 issuing additional citation if the court finds that
23 the appointment or the issuance of the order is
24 necessary to protect the proposed ward or the proposed
25 ward's estate.

26 Revised Law

27 Sec. 1251.052. QUALIFICATION AND DURATION OF CERTAIN
28 TEMPORARY GUARDIANSHIPS. (a) A temporary guardian appointed under
29 Section 1251.051 must qualify in the same form and manner required
30 of a guardian under this title.

31 (b) The term of a temporary guardian appointed under Section
32 1251.051 expires:

33 (1) at the conclusion of the hearing challenging or
34 contesting the application; or

35 (2) on the date a permanent guardian appointed by the
36 court for the proposed ward qualifies to serve as the ward's
37 guardian. (Tex. Prob. Code, Sec. 875(l).)

38 Source Law

39 (1) A temporary guardian appointed under
40 Subsection (k) of this section must qualify in the same
41 form and manner required of a guardian under this code.

1 The term of the temporary guardian expires at the
2 conclusion of the hearing challenging or contesting
3 the application or on the date a permanent guardian the
4 court appoints for the proposed ward qualifies to
5 serve as the ward's guardian.

6 Revisor's Note

7 Section 875(1), Texas Probate Code, requires a
8 temporary guardian to qualify in the same form and
9 manner as a guardian under "this code," meaning the
10 Texas Probate Code. The revised law substitutes a
11 reference to "this title" for the reference to "this
12 code" because the provisions of the Texas Probate Code
13 that relate to qualification of guardians are revised
14 in Title 3 of this code, and this chapter is included
15 in that title.

16 [Sections 1251.053-1251.100 reserved for expansion]

17 SUBCHAPTER C. POWERS AND DUTIES OF TEMPORARY GUARDIANS

18 Revised Law

19 Sec. 1251.101. AUTHORITY OF TEMPORARY GUARDIAN. (a) When
20 the temporary guardian files the oath and bond required under this
21 title, the court order appointing the temporary guardian takes
22 effect without the necessity for issuance of letters of
23 guardianship.

24 (b) The clerk shall note compliance with the oath and bond
25 requirements by the appointed temporary guardian on a certificate
26 attached to the order.

27 (c) The order appointing the temporary guardian is evidence
28 of the temporary guardian's authority to act within the scope of the
29 powers and duties stated in the order.

30 (d) The clerk may not issue certified copies of the order
31 until the oath and bond requirements are satisfied. (Tex. Prob.
32 Code, Sec. 876.)

33 Source Law

34 Sec. 876. When the temporary guardian files the
35 oath and bond required under this chapter, the court
36 order appointing the temporary guardian takes effect
37 without the necessity for issuance of letters of
38 guardianship. The clerk shall note compliance with
39 oath and bond requirements by the appointed guardian
40 on a certificate attached to the order. The order

1 shall be evidence of the temporary guardian's
2 authority to act within the scope of the powers and
3 duties set forth in the order. The clerk may not issue
4 certified copies of the order until the oath and bond
5 requirements are satisfied.

6 Revised Law

7 Sec. 1251.102. APPLICABILITY OF GUARDIANSHIP PROVISIONS.

8 The provisions of this title relating to the guardianship of the
9 persons and estates of incapacitated persons apply to the temporary
10 guardianship of the persons and estates of incapacitated persons,
11 to the extent the provisions may be made applicable. (Tex. Prob.
12 Code, Sec. 877.)

13 Source Law

14 Sec. 877. All the provisions of this chapter
15 relating to the guardianship of persons and estates of
16 incapacitated persons apply to a temporary
17 guardianship of the persons and estates of
18 incapacitated persons, insofar as the same may be made
19 applicable.

20 [Sections 1251.103-1251.150 reserved for expansion]

21 SUBCHAPTER D. EXPIRATION AND CLOSING OF TEMPORARY GUARDIANSHIP

22 Revised Law

23 Sec. 1251.151. DURATION OF TEMPORARY GUARDIANSHIP. Except
24 as provided by Section 1251.052, a temporary guardianship may not
25 remain in effect for more than 60 days. (Tex. Prob. Code, Sec.
26 875(h).)

27 Source Law

28 (h) Except as provided by Subsection (k) of this
29 section, a temporary guardianship may not remain in
30 effect for more than 60 days.

31 Revisor's Note

32 Section 875(h), Texas Probate Code, provides a
33 60-day term for a temporary guardianship "[e]xcept as
34 provided by Subsection (k)." Before 2003, Section
35 875(k), Texas Probate Code, provided for the
36 expiration of the term of a temporary guardian under
37 certain circumstances. Chapter 277, Acts of the 78th
38 Legislature, Regular Session, 2003, amended Section
39 875 and divided Subsection (k) of that section into
40 Subsections (k) and (l). Section 875(l) now contains

1 the provision relating to a temporary guardian's term.
2 Section 875(1) is revised as Section 1251.052 of this
3 chapter. Accordingly, the revised law substitutes a
4 cross-reference to Section 1251.052 for the reference
5 to Section 875(k).

6 Revised Law

7 Sec. 1251.152. ACCOUNTING. (a) At the expiration of a
8 temporary guardianship, the temporary guardian shall file with the
9 court clerk:

10 (1) a sworn list of all estate property that has come
11 into the temporary guardian's possession;

12 (2) a return of all sales made by the temporary
13 guardian; and

14 (3) a full exhibit and account of all the temporary
15 guardian's acts as temporary guardian.

16 (b) The court shall act on the list, return, exhibit, and
17 account filed under Subsection (a). (Tex. Prob. Code, Secs. 878,
18 879 (part).)

19 Source Law

20 Sec. 878. At the expiration of a temporary
21 appointment, the appointee shall file with the clerk
22 of the court a sworn list of all property of the estate
23 that has come into the hands of the appointee, a return
24 of all sales made by the appointee, and a full exhibit
25 and account of all of the appointee's acts as temporary
26 appointee.

27 Sec. 879. The court shall act on the list,
28 return, exhibit, and account filed under Section 878
29 of this code. . . .

30 Revisor's Note

31 (1) Section 878, Texas Probate Code, refers to
32 items that must be filed with the clerk of the court by
33 the "appointee" at the expiration of the temporary
34 "appointment." Throughout this subchapter, the
35 revised law substitutes "temporary guardian" or
36 "guardian," as appropriate, for "appointee" and
37 "guardianship" for "appointment" for consistency of
38 terminology throughout this chapter.

39 (2) Section 878, Texas Probate Code, refers to

property of the estate that has come into the "hands of the appointee." The revised law substitutes "possession" for "hands" because the terms are synonymous in context and "possession" is more consistent with modern usage.

Revised Law

Sec. 1251.153. DELIVERY OF ESTATE; DISCHARGE OF TEMPORARY GUARDIAN. (a) When temporary letters expire or cease to be effective for any reason, the court immediately shall enter an order requiring the temporary guardian to deliver the estate remaining in the temporary guardian's possession to the person legally entitled to possession of the estate.

(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).)

Source Law

Sec. 879. . . . Whenever temporary letters expire or cease to be effective for any reason, the court shall immediately enter an order requiring the temporary appointee to deliver the estate remaining in the temporary appointee's possession to the person who is legally entitled to the possession of the estate. The temporary appointee shall be discharged and the sureties on the bond of the temporary appointee shall be released as to future liability on proof that the appointee delivered the property as required by this section.

CHAPTER 1252. GUARDIANSHIPS FOR NONRESIDENT WARDS

SUBCHAPTER A. RESIDENT GUARDIAN OF NONRESIDENT WARD'S ESTATE

Sec. 1252.001. GRANTING OF GUARDIANSHIP OF ESTATE FOR
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[Sections 1252.004-1252.050 reserved for expansion]

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5		GUARDIANSHIP 581
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11 CHAPTER 1252. GUARDIANSHIPS FOR NONRESIDENT WARDS

12 SUBCHAPTER A. RESIDENT GUARDIAN OF NONRESIDENT WARD'S ESTATE

13 Revised Law

14 Sec. 1252.001. GRANTING OF GUARDIANSHIP OF ESTATE FOR
15 NONRESIDENT. (a) A guardianship of the estate of a nonresident
16 incapacitated person who owns property in this state may be
17 granted, if necessary, in the same manner as for the property of a
18 resident of this state.

19 (b) A court in the county in which the principal estate of
20 the nonresident incapacitated person is located has jurisdiction to
21 appoint the guardian. (Tex. Prob. Code, Sec. 882 (part).)

22 Source Law

23 Sec. 882. Guardianship of the estate of a
24 nonresident incapacitated person who owns property in
25 this state may be granted, if necessary, in the same
26 manner as for the property of a resident of this state.
27 A court in the county in which the principal estate of
28 the ward is located has jurisdiction to appoint a
29 guardian. . . .

30 Revisor's Note

31 Section 882, Texas Probate Code, refers both to
32 an "incapacitated person" and to a "ward." The revised
33 law substitutes "incapacitated person" for "ward" for
34 accuracy and consistency of terminology in this
35 section and this title. Under Section 601(31), Texas
36 Probate Code, revised in this code as Section
37 1002.030, an incapacitated person is not a ward until a

1 guardian has been appointed for that person. In the
2 context of Section 882, Texas Probate Code, which
3 authorizes the appointment of a guardian of the estate
4 of a nonresident incapacitated person in certain
5 circumstances, the person for whom the guardian may be
6 appointed is not yet a "ward" because a guardian has
7 not yet been appointed for that person.

8 Revised Law

9 Sec. 1252.002. COURT ACTIONS AND ORDERS CONCERNING ESTATE.
10 The court shall take all actions and make all necessary orders with
11 respect to the estate described by Section 1252.001 of a
12 nonresident ward for the maintenance, support, care, or education
13 of the ward out of the proceeds of the estate, in the same manner as
14 if the ward were a resident of this state sent abroad by the court
15 for education or treatment. (Tex. Prob. Code, Sec. 882 (part).)

16 Source Law

17 Sec. 882. . . . The court shall take all actions
18 and make all necessary orders with respect to the
19 estate of the ward for the maintenance, support, care,
20 or education of the ward, out of the proceeds of the
21 ward's estate, in the same manner as if the ward were a
22 resident of this state and was sent abroad by the court
23 for education or treatment. . . .

24 Revised Law

25 Sec. 1252.003. CLOSING RESIDENT GUARDIANSHIP. The court
26 shall close a resident guardianship of an estate granted under this
27 subchapter if a qualified nonresident guardian of the estate later
28 qualifies in this state under Section 1252.051 as a nonresident
29 guardian. (Tex. Prob. Code, Sec. 882 (part).)

30 Source Law

31 Sec. 882. . . . If a qualified nonresident
32 guardian of the estate later qualifies in this state
33 under Section 881 of this code, the court shall close
34 the resident guardianship.

35 Revisor's Note

36 Section 882, Texas Probate Code, refers to a
37 nonresident guardian who qualifies under Section 881,
38 Texas Probate Code. The revised law substitutes a
39 reference to Section 1252.051 because the portion of

1 Section 881, Texas Probate Code, that relates to the
2 qualification of a nonresident guardian is revised in
3 this chapter as Section 1252.051.

4 [Sections 1252.004-1252.050 reserved for expansion]

5 SUBCHAPTER B. NONRESIDENT GUARDIAN OF NONRESIDENT WARD'S ESTATE

6 Revised Law

7 Sec. 1252.051. APPOINTMENT AND QUALIFICATION OF
8 NONRESIDENT GUARDIAN. (a) A nonresident of this state may be
9 appointed and qualified as guardian or coguardian of a nonresident
10 ward's estate located in this state in the same manner provided by
11 this title for the appointment and qualification of a resident
12 guardian of the estate of an incapacitated person if:

13 (1) a court of competent jurisdiction in the
14 geographical jurisdiction in which the nonresident resides
15 appointed the nonresident guardian;

16 (2) the nonresident is qualified as guardian or as a
17 fiduciary legal representative by any name known in the foreign
18 jurisdiction of the property or estate of the ward located in the
19 jurisdiction of the foreign court; and

20 (3) the nonresident, with the written application for
21 appointment, files in the county court of a county of this state in
22 which all or part of the nonresident ward's estate is located a
23 complete transcript of the proceedings from the records of the
24 court in which the nonresident applicant was appointed.

25 (b) The transcript required by Subsection (a)(3) must:

26 (1) show the applicant's appointment and qualification
27 as guardian or other fiduciary legal representative of the ward's
28 property or estate;

29 (2) be certified to and attested by the clerk of the
30 foreign court or the court officer charged by law with custody of
31 the court records, under the court seal, if any; and

32 (3) have attached a certificate of the judge, chief
33 justice, or presiding magistrate of the foreign court certifying
34 that the attestation of the clerk or legal custodian of the court

1 records is in correct form. (Tex. Prob. Code, Secs. 881(a), (b).)

2 Source Law

3 Sec. 881. (a) A nonresident of this state may
4 be appointed and qualified as guardian or coguardian
5 of a nonresident ward's estate located in this state in
6 the same manner provided by this code for the
7 appointment and qualification of a resident as
8 guardian of the estate of an incapacitated person if:

9 (1) a court of competent jurisdiction in
10 the geographical jurisdiction in which the nonresident
11 resides appointed the nonresident guardian;

12 (2) the nonresident is qualified as
13 guardian or as a fiduciary legal representative by
14 whatever name known in the foreign jurisdiction of the
15 property or estate of the ward located in the
16 jurisdiction of the foreign court; and

17 (3) with the written application for
18 appointment in the county court of any county in this
19 state in which all or part of the ward's estate is
20 located, the nonresident files a complete transcript
21 of the proceedings from the records of the court in
22 which the nonresident applicant was appointed, showing
23 the applicant's appointment and qualification as the
24 guardian or fiduciary legal representative of the
25 ward's property or estate.

26 (b) The transcript required by Subsection (a) of
27 this section must be certified to and attested by the
28 clerk of the foreign court or the officer of the court
29 charged by law with custody of the court records, under
30 the court seal, if any. The certificate of the judge,
31 chief justice, or presiding magistrate, as applicable,
32 of the foreign court must be attached to the
33 transcript, certifying that the attestation of the
34 transcript by the clerk or legal custodian of the court
35 records is in correct form.

36 Revisor's Note

37 Section 881(a), Texas Probate Code, provides that
38 a nonresident of this state may be appointed and
39 qualified as guardian or coguardian of a nonresident
40 ward's estate "in the same manner provided by this
41 code" that a resident of this state may be appointed
42 and qualified as guardian of an incapacitated person's
43 estate. The revised law substitutes a reference to
44 "this title" for the reference to "this code" because
45 the provisions of the Texas Probate Code that relate to
46 appointment and qualification of a resident of this
47 state as a guardian are revised in this title.

48 Revised Law

49 Sec. 1252.052. APPOINTMENT; ISSUANCE OF LETTERS OF
50 GUARDIANSHIP. (a) If a nonresident applicant meets the

1 requirements of Section 1252.051, without the necessity of notice
2 or citation, the court shall enter an order appointing the
3 nonresident as guardian or coguardian of a nonresident ward's
4 estate located in this state.

5 (b) After the nonresident applicant qualifies in the manner
6 required of resident guardians and files with the court a power of
7 attorney appointing a resident agent to accept service of process
8 in all actions or proceedings with respect to the estate, the clerk
9 shall issue the letters of guardianship to the nonresident
10 guardian. (Tex. Prob. Code, Sec. 881(c).)

11 Source Law

12 [Sec. 881. (a) A nonresident of this state may
13 be appointed and qualified as guardian or coguardian
14 of a nonresident ward's estate located in this state
15]

16 (c) If the nonresident applicant meets the
17 requirements of this section, without the necessity of
18 any notice or citation, the court shall enter an order
19 appointing the nonresident. After the nonresident
20 applicant qualifies in the manner required of resident
21 guardians and files with the court a power of attorney
22 appointing a resident agent to accept service of
23 process in all actions or proceedings with respect to
24 the estate, the clerk shall issue the letters of
25 guardianship to the nonresident guardian.

26 Revisor's Note

27 Section 881(c), Texas Probate Code, refers to a
28 nonresident applicant for appointment as a nonresident
29 guardian who meets the "requirements of this section,"
30 meaning Section 881, Texas Probate Code. The revised
31 law substitutes a reference to Section 1252.051 for
32 "this section" because the only requirements of
33 Section 881, Texas Probate Code, that a nonresident
34 applicant must meet are those found in Section 881(a),
35 Texas Probate Code. That section is revised in this
36 subchapter as Section 1252.051.

37 Revised Law

38 Sec. 1252.053. INVENTORY AND APPRAISEMENT; ADMINISTRATION
39 OF ESTATE. After qualification, a nonresident guardian:

40 (1) shall file an inventory and appraisal of the
41 ward's estate in this state subject to the court's jurisdiction, as

1 in ordinary cases; and

2 (2) is subject to the applicable provisions of this
3 code governing the handling and settlement of an estate by a
4 resident guardian. (Tex. Prob. Code, Sec. 881(d).)

5 Source Law

6 (d) After qualification, the nonresident
7 guardian shall file an inventory and appraisal of
8 the estate of the ward in this state subject to the
9 jurisdiction of the court, as in ordinary cases, and is
10 subject to all applicable provisions of this code with
11 respect to the handling and settlement of estates by
12 resident guardians.

13 Revised Law

14 Sec. 1252.054. DELIVERY OF ESTATE TO CERTAIN GUARDIANS.
15 The court may order a resident guardian who has any of the ward's
16 estate to deliver the estate to a qualified and acting guardian of
17 the ward. (Tex. Prob. Code, Sec. 881(e).)

18 Source Law

19 (e) A resident guardian who has any of the
20 estate of a ward may be ordered by the court to deliver
21 the estate to a duly qualified and acting guardian of
22 the ward.

23 Revisor's Note

24 Section 881(e), Texas Probate Code, states that a
25 court may order property to be delivered "to a duly
26 qualified and acting" guardian of the ward. The
27 revised law omits "duly" in this context as
28 unnecessary. The requirement that the guardian be
29 qualified and acting is sufficient to convey that the
30 guardian must have met the requirements to qualify and
31 act as guardian.

32 Revised Law

33 Sec. 1252.055. REMOVAL OF WARD'S PROPERTY FROM STATE BY
34 NONRESIDENT GUARDIAN. Regardless of whether qualified under this
35 title, a nonresident guardian may remove personal property of the
36 ward from this state if:

37 (1) the removal does not conflict with the tenure of
38 the property or the terms of the guardianship under which the
39 property is held; and

(2) all known debts against the estate in this state 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.)

Source Law

Sec. 881A. A nonresident guardian, regardless of whether the nonresident guardian is qualified under this code, may remove personal property of the ward out of the state if:

(1) the removal does not conflict with the tenure of the property or the terms and limitations of the guardianship under which the property is held; and

(2) all debts known to exist against the estate in this state are paid or secured by bond payable to and approved by the judge of the court in which guardianship proceedings are pending in this state.

Revisor's Note

(1) Section 881A, Texas Probate Code, authorizes certain actions by a nonresident guardian, regardless of whether the nonresident guardian is qualified under "this code." The revised law substitutes a reference to "this title" for "this code" because the only requirements of the Texas Probate Code that relate to the qualification of a guardian are revised in this title.

(2) Section 881A, Texas Probate Code, refers to "the terms and limitations of the guardianship." The revised law omits the reference to "limitations" because, in this context, "limitations" is included in the meaning of "terms."

CHAPTER 1253. INTERSTATE GUARDIANSHIPS

SUBCHAPTER A. TRANSFER OF GUARDIANSHIP TO FOREIGN JURISDICTION

Sec. 1253.001. APPLICATION TO TRANSFER GUARDIANSHIP TO FOREIGN JURISDICTION 585

Sec. 1253.002. NOTICE OF APPLICATION 585

Sec. 1253.003. DETERMINATION REGARDING TRANSFER OF GUARDIANSHIP 586

[Sections 1253.004-1253.050 reserved for expansion]

1 SUBCHAPTER B. RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP

2 Sec. 1253.051. APPLICATION FOR RECEIPT AND ACCEPTANCE

3 OF FOREIGN GUARDIANSHIP 586

4 Sec. 1253.052. NOTICE OF APPLICATION 587

5 Sec. 1253.053. DETERMINATION REGARDING RECEIPT AND

6 ACCEPTANCE OF FOREIGN GUARDIANSHIP 587

7 Sec. 1253.054. HEARING TO CONSIDER MODIFICATION 589

8 Sec. 1253.055. GUARDIANSHIP TRANSFER PROCEEDINGS FILED

9 IN TWO OR MORE COURTS 589

10 Sec. 1253.056. CONSTRUCTION WITH OTHER LAW 589

11 [Sections 1253.057-1253.100 reserved for expansion]

12 SUBCHAPTER C. GUARDIANSHIP PROCEEDINGS FILED IN THIS STATE AND IN

13 FOREIGN JURISDICTION

14 Sec. 1253.101. DELAY OF CERTAIN GUARDIANSHIP

15 PROCEEDINGS 590

16 Sec. 1253.102. DETERMINATION OF VENUE; ACTION

17 FOLLOWING DETERMINATION 590

18 Sec. 1253.103. NECESSARY ORDERS 591

19 CHAPTER 1253. INTERSTATE GUARDIANSHIPS

20 SUBCHAPTER A. TRANSFER OF GUARDIANSHIP TO FOREIGN JURISDICTION

21 Revised Law

22 Sec. 1253.001. APPLICATION TO TRANSFER GUARDIANSHIP TO

23 FOREIGN JURISDICTION. A guardian of the person or estate may apply

24 to the court that has jurisdiction over the guardianship to

25 transfer the guardianship to a court in a foreign jurisdiction to

26 which the ward has permanently moved. (Tex. Prob. Code, Sec.

27 891(a).)

28 Source Law

29 Sec. 891. (a) A guardian of the person or

30 estate of a ward may apply with the court that has

31 jurisdiction over the guardianship to transfer the

32 guardianship to a court in a foreign jurisdiction if

33 the ward has moved permanently to the foreign

34 jurisdiction.

35 Revised Law

36 Sec. 1253.002. NOTICE OF APPLICATION. Notice of an

37 application to transfer a guardianship under this subchapter shall

1 be:

2 (1) served personally on the ward; and

3 (2) given to the foreign court to which the
4 guardianship is to be transferred. (Tex. Prob. Code, Sec. 891(b).)

5 Source Law

6 (b) Notice of the application to transfer a
7 guardianship under this section shall be served
8 personally on the ward and shall be given to the
9 foreign court to which the guardianship is to be
10 transferred.

11 Revised Law

12 Sec. 1253.003. DETERMINATION REGARDING TRANSFER OF
13 GUARDIANSHIP. (a) On the court's own motion or on the motion of the
14 ward or any interested person, the court shall hold a hearing to
15 consider an application to transfer a guardianship under this
16 subchapter.

17 (b) The court shall transfer a guardianship to a foreign
18 court if the court determines the transfer is in the best interests
19 of the ward. The transfer of the guardianship must be made
20 contingent on the acceptance of the guardianship in the foreign
21 jurisdiction.

22 (c) The court shall coordinate efforts with the appropriate
23 foreign court to facilitate the orderly transfer of the
24 guardianship. (Tex. Prob. Code, Secs. 891(c), (d).)

25 Source Law

26 (c) On the court's own motion or on the motion of
27 the ward or any interested person, the court shall hold
28 a hearing to consider the application to transfer the
29 guardianship.

30 (d) The court shall transfer a guardianship to a
31 foreign court if the court determines the transfer is
32 in the best interests of the ward. The transfer of the
33 guardianship must be made contingent on the acceptance
34 of the guardianship in the foreign jurisdiction. To
35 facilitate the orderly transfer of the guardianship,
36 the court shall coordinate efforts with the
37 appropriate foreign court.

38 [Sections 1253.004-1253.050 reserved for expansion]

39 SUBCHAPTER B. RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP

40 Revised Law

41 Sec. 1253.051. APPLICATION FOR RECEIPT AND ACCEPTANCE OF
42 FOREIGN GUARDIANSHIP. A guardian appointed by a foreign court to

1 represent an incapacitated person who is residing in this state or
2 intends to move to this state may file an application with a court
3 in which the ward resides or intends to reside to have the
4 guardianship transferred to the court. (Tex. Prob. Code, Sec.
5 892(a).)

6 Source Law

7 Sec. 892. (a) A guardian appointed by a foreign
8 court to represent an incapacitated person who is
9 residing in this state or intends to move to this state
10 may file an application with a court in which the ward
11 resides or intends to reside to have the guardianship
12 transferred to the court.

13 Revisor's Note

14 Section 892(a), Texas Probate Code, authorizes a
15 guardian appointed by a foreign court to file an
16 application for receipt and acceptance of the foreign
17 guardianship "with a court in which the ward resides or
18 intends to reside." The intent of the quoted language
19 is not clear. The revised law is, therefore, drafted
20 to preserve the ambiguity of Section 892(a), Texas
21 Probate Code.

22 Revised Law

23 Sec. 1253.052. NOTICE OF APPLICATION. Notice of an
24 application for receipt and acceptance of a foreign guardianship
25 under this subchapter shall be:

- 26 (1) served personally on the ward; and
27 (2) given to the foreign court from which the
28 guardianship is to be transferred. (Tex. Prob. Code, Sec. 892(b).)

29 Source Law

30 (b) Notice of the application for receipt and
31 acceptance of a foreign guardianship under this
32 section shall be served personally on the ward and
33 shall be given to the foreign court from which the
34 guardianship is to be transferred.

35 Revised Law

36 Sec. 1253.053. DETERMINATION REGARDING RECEIPT AND
37 ACCEPTANCE OF FOREIGN GUARDIANSHIP. (a) On the court's own motion
38 or on the motion of the ward or any interested person, the court
39 shall hold a hearing to consider an application for receipt and

1 acceptance of a foreign guardianship under this subchapter.

2 (b) In reviewing the application, the court should
3 determine:

4 (1) that the proposed guardianship is not a collateral
5 attack on an existing or proposed guardianship in another
6 jurisdiction in this or another state; and

7 (2) for a guardianship in which a court in one or more
8 states may have jurisdiction, that the application has been filed
9 in the court that is best suited to consider the matter.

10 (c) The court shall grant the application if the transfer of
11 the guardianship from the foreign jurisdiction is in the best
12 interests of the ward.

13 (d) In granting the application, the court shall give full
14 faith and credit to the provisions of the foreign guardianship
15 order concerning the determination of the ward's incapacity and the
16 rights, powers, and duties of the guardian.

17 (e) The court shall coordinate efforts with the appropriate
18 foreign court to facilitate the orderly transfer of the
19 guardianship. (Tex. Prob. Code, Secs. 892(d), (e), (f), (g).)

20 Source Law

21 (d) In reviewing an application for receipt and
22 acceptance of a foreign guardianship, the court should
23 determine:

24 (1) that the proposed guardianship is not
25 a collateral attack on an existing or proposed
26 guardianship in another jurisdiction in this or
27 another state; and

28 (2) for a guardianship in which a court in
29 one or more states may have jurisdiction, that the
30 application has been filed in the court that is best
31 suited to consider the matter.

32 (e) On the court's own motion or on the motion of
33 the ward or any interested person, the court shall hold
34 a hearing to consider the application for receipt and
35 acceptance of a foreign guardianship.

36 (f) The court shall grant an application for
37 receipt and acceptance of a foreign guardianship if
38 the transfer of the guardianship from the foreign
39 jurisdiction is in the best interests of the ward. In
40 granting an application under this subsection, the
41 court shall give full faith and credit to the
42 provisions of the foreign guardianship order
43 concerning the determination of the ward's incapacity
44 and the rights, powers, and duties of the guardian.

45 (g) The court shall coordinate efforts with the
46 appropriate foreign court to facilitate the orderly
47 transfer of the guardianship.

Revised Law

Source Law

Revised Law

Source Law

Revised Law

Source Law

(h) The denial of an application for receipt and acceptance of a guardianship under this section does not affect the right of a guardian appointed by a foreign court to file an application to be appointed guardian of the incapacitated person under Section 682 of this code.

[Sections 1253.057-1253.100 reserved for expansion]

SUBCHAPTER C. GUARDIANSHIP PROCEEDINGS FILED IN THIS STATE AND IN
FOREIGN JURISDICTION

Revised Law

Sec. 1253.101. DELAY OF CERTAIN GUARDIANSHIP PROCEEDINGS.

A court in which a guardianship proceeding is filed and in which venue of the proceeding is proper may delay further action in the proceeding in that court if:

(1) another guardianship proceeding involving a matter at issue in the proceeding filed in the court is subsequently filed in a court in a foreign jurisdiction; and

(2) venue of the proceeding in the foreign court is proper. (Tex. Prob. Code, Sec. 894(a).)

Source Law

Sec. 894. (a) A court in which a guardianship proceeding is filed and in which venue of the proceeding is proper may delay further action in the proceeding in that court if:

(1) another guardianship proceeding involving a matter at issue in the proceeding filed in the court is subsequently filed in a court in a foreign jurisdiction; and

(2) venue of the proceeding in the foreign court is proper.

Revised Law

Sec. 1253.102. DETERMINATION OF VENUE; ACTION FOLLOWING DETERMINATION. (a) A court that delays further action in a guardianship proceeding under Section 1253.101 shall determine whether venue of the proceeding is more suitable in that court or in the foreign court.

(b) In making a determination under Subsection (a), the court may consider:

(1) the interests of justice;

(2) the best interests of the ward or proposed ward;

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 Source Law

11 (b) A court that delays further action in a
12 guardianship proceeding under Subsection (a) of this
13 section shall determine whether venue of the
14 proceeding is more suitable in that court or in the
15 foreign court. In making that determination, the
16 court may consider:
17 (1) the interests of justice;
18 (2) the best interests of the ward or
19 proposed ward; and
20 (3) the convenience of the parties.

21 (d) The court shall resume the guardianship
22 proceeding if the court determines that venue is more
23 suitable in that court. If the court determines that
24 venue is more suitable in the foreign court, the court
25 shall, with the consent of the foreign court, transfer
26 the proceeding to the foreign court.

27 Revised Law

28 Sec. 1253.103. NECESSARY ORDERS. A court that delays
29 further action in a guardianship proceeding under Section 1253.101
30 may issue any order the court considers necessary to protect the
31 proposed ward or the proposed ward's estate. (Tex. Prob. Code, Sec.
32 894(c).)

33 Source Law

34 (c) A court that delays further action under
35 Subsection (a) of this section may issue any order it
36 considers necessary to protect the proposed ward or
37 the proposed ward's estate.

38 [Chapters 1254-1300 reserved for expansion]

39 SUBTITLE H. COURT-AUTHORIZED TRUSTS AND ACCOUNTS

40 CHAPTER 1301. MANAGEMENT TRUSTS

41 SUBCHAPTER A. GENERAL PROVISIONS

42 Sec. 1301.001. DEFINITION 593
43 Sec. 1301.002. APPLICABILITY OF TEXAS TRUST CODE 593