

# The 2021 Texas Estate and Trust Legislative Update

## Statutory Language Supplement

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William D. Pargaman, Austin  
Brink Bennett Pargaman Atkins

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Osborne, Helman, Knebel & Scott

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"2021 Texas Estate and Trust Legislative Update Supplement."

(See the note on page 1 about hyperlinking to the online version of this supplement.)

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**Legal Experience**

Bill Pargaman joined the Austin law firm of Brink Bennett Pargaman Atkins in July of 2021. He has been certified as a specialist in Estate Planning and Probate Law by the Texas Board of Legal Specialization (since 1986) and has been a Fellow in the American College of Trust and Estate Counsel (since 1994). He is very active in the Real Estate, Probate and Trust Law Section of the State Bar of Texas, having served as REPTL's Chair for the 2015-2016 bar year, as chair of its Estate and Trust Legislative Affairs Committee for the 2009, 2011, and 2013 legislative sessions, and as a Council member and chair of REPTL's Trusts Committee from 2004 to 2008.

Bill's practice involves the preparation of wills, trusts and other estate planning documents, charitable planning, and estate administration and alternatives to administration. He advises clients on the organization and maintenance of business entities such as corporations, partnerships, and limited liability entities. He represents nonprofit entities with respect to issues involving charitable trusts and endowments. Additionally, he represents clients in contested litigation involving estates, trusts and beneficiaries, and tax issues.

**Education**

- Doctor of Jurisprudence, *with honors*, University of Texas School of Law, 1981, Order of the Coif, Chancellors
- Bachelor of Arts, Government, *with high honors*, University of Texas at Austin, 1978, Phi Beta Kappa

**Professional Licenses**

- Attorney at Law, Texas, 1981

**Court Admissions**

- United States Tax Court

**Prior Experience**

- Saunders, Norval, Pargaman & Atkins, L.L.P., 2012-2021
- Brown McCarroll, L.L.P. (now Husch Blackwell LLP), 1981 – 2012

**Speeches and Publications**

Mr. Pargaman has been a speaker, author, or course director at numerous seminars, including:

- State Bar of Texas (TexasBarCLE) – Advanced Estate Planning and Probate Course, Advanced Estate Planning Strategies Course, Estate Planning and Probate Drafting Course, Advanced Guardianship Law Course, Advanced Real Estate Law Course, Advanced Real Estate Drafting Course, Advanced Tax Law Course, State Bar College Summer School, State Bar Annual Meeting, Practice Skills for New Lawyers, Essentials for the General Practitioner, Miscellaneous Webcasts, and more
- Real Estate, Probate and Trust Law Section Annual Meeting
- University of Texas Estate Planning, Guardianship, and Elder Law Conference
- South Texas College of Law Wills and Probate Institute
- Estate Planning & Community Property Law Journal Seminar
- Texas NAELA Summer Conference
- University of Houston Law Foundation General Practice Institute, and Wills and Probate Institute

## William D. Pargaman (cont.)

- Austin Bar Association Estate Planning and Probate Section Annual Probate and Estate Planning Seminar
- Austin Bar Association and Austin Young Lawyers Association Legal Malpractice Seminar
- Dallas Bar Association Probate, Trusts & Estate Section
- Houston Bar Association Probate, Trusts & Estate Section
- Tarrant County Probate Bar Association
- Hidalgo County Bar Association Estate Planning and Probate Section
- Bell County Bench Bar Conference
- Midland College/Midland Memorial Foundation Annual Estate Planning Seminar
- Austin Chapter, Texas Society of Certified Public Accountants, Annual Tax Update
- Texas Bankers Association Advanced Trust Forum
- Texas Credit Union League Compliance, Audit & Human Resources Conference
- Estate Planning Councils in Austin, Amarillo, Corpus Christi, Houston, Lubbock, San Antonio, and Tyler
- Austin Association of Life Underwriters

### Professional Memberships and Activities

- American College of Trust and Estate Counsel, Fellow, 1994-Present
- State Bar of Texas
  - Real Estate, Probate and Trust Law Section, Member (Chair, 2015-2016)
    - Real Estate, Probate, and Trust Law Council, Member, 2004–2008
    - Estate and Trust Legislative Affairs Committee, Member, 2000–Present (Chair, 2008–2013)
    - Public Service Committee, Chair, 2013–2014
    - Trusts Committee, Member, 2000–2010 (Chair, 2004–2008)
    - Uniform Trust Code Study Project, Articles 7–9 & UPIA, Subcommittee Member, 2000–2003
  - Continuing Legal Education Committee, 2018-Present
  - Texas Board of Legal Specialization (Estate Planning and Probate Law), Examiner, 1995-1997
- Estate Planning Council of Central Texas, Member, 1981-2019 (President, 1991-1992)
- Austin Bar Association, Member
  - Estate Planning and Probate Section, Member (Chair, 1992-1993, Board Member, 1997-1999)

### Honors

- Recipient, TexasBarCLE STANDING OVATION award, 2014
- Listed in The Best Lawyers in America® (2019 Trusts & Estates “Lawyer of the Year” in Austin, TX)
- Listed in *Texas Super Lawyers* (Texas Monthly)
- Listed in The Best Lawyers in Austin (Austin Monthly)

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## **Education**

- University of Houston Law Center, Houston, Texas (LL.M. in Tax, 2012)
- Samford University Cumberland School of Law, Birmingham, Alabama (J.D., 2011)
- Washington & Lee University, Lexington, Virginia (B.A. in Politics, 2008)

## **Certifications and Admissions**

- Board Certified, Estate Planning and Probate Law, Texas Board of Legal Specialization
- Admitted to Practice: State Bar of Texas; United States Tax Court

## **Professional Memberships**

- Member, The College of the State Bar of Texas
- Member, REPTL Leadership Academy Class of 2018-2019
- Member, Real Estate, Probate, and Trust Law Section of the State Bar of Texas
- Member, Tax Section of the State Bar of Texas
- Member, Estate Planning and Probate Section of the Austin Bar Association
- Member, Estate Planning Council of Central Texas

## **Publications and Presentations**

- Presenter/Co-Author, “Teaching the ABCs to Your Trustees: How to Provide Practical Instructions to New Trustees,” State Bar of Texas, Handling Your First (or Next) Trust Course (2021)
- Co-Author, “Language to Include in Your Estate Planning Documents: Suggestions from Trust and Estate Litigators,” State Bar of Texas, Estate Planning and Probate Drafting (2020)
- Co-Author, “Transfer Restrictions in Business Entities,” State Bar of Texas, Advanced Estate Planning & Probate Course (2020)
- Co-Author, “How to Request (and Get) a PLR,” *Texas Tax Lawyer*, Spring 2013, Vol. 40, No. 2



# The 2021 Texas Estate and Trust Legislative Update

## Statutory Language Supplement

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# The 2021 Texas Estate and Trust Legislative Update

## Statutory Language Supplement

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### What Is This?

Since the 2009 legislative session, I've<sup>1</sup> written the legislative update on behalf of the Real Estate, Probate, and Trust Law Section of the State Bar of Texas covering bills that relate to probate (*i.e.*, decedents' estates), guardianships, trusts, powers of attorney, and several other areas of interest to estate and probate practitioners. Since 2011, I've added attachments that contained the statutory language of most of those bills, marked to show additions and deletions. Beginning in 2019, I've published the statutory language as a separate supplement that won't automatically be printed at each seminar or meeting at which the legislative update is presented. Think of this as a greener alternative. **That's what this is.**

### CMA Disclaimers.

While reviewing the attachments, please keep in mind the following:

- I've made every reasonable attempt to compile the statutory language, including additions and deletions, accurately.
- Despite rumors to the contrary, I am human. And have been known to make mistakes.
- I often work on this late at night, past my normal bedtime, perhaps, even, under the influence of strategic amounts of Johnnie Walker Black (donations of Red, Black, Green, Gold, Blue, Platinum, or even Swing happily accepted!).

Therefore, you'll find directions in the last section on this page for obtaining copies of the actual bills themselves so you may review the changes they contain yourself.

### A Note About Linking to the Electronic Versions.

Feel free to link to the electronic versions of the paper or this supplement if you'd like. If you do, use the URLs found on the cover page to link to the most recent versions. The link to the main legislative update paper is:

[www.snpalaw.com/resources/2021LegislativeUpdate](http://www.snpalaw.com/resources/2021LegislativeUpdate)

And the link to this statutory language supplement is:

[www.snpalaw.com/resources/2021LegislativeSupplement](http://www.snpalaw.com/resources/2021LegislativeSupplement)

Once you click on either link, you'll open a PDF. However, **don't** copy the URL that you'll find in your browser's address bar when you open the PDF! That's likely to be a 100+ character web address that will take you to that particular version of the paper only, and only so long as that version remains posted. Trust me – the links I've given you will take you to the right version each time.

As an alternative, you can go to the [Resources](#) page at [snpalaw.com](http://snpalaw.com) and scroll to the legislative update materials posted "**For Professional Advisors.**"

***However, keep in mind that I moved to a new law firm in July of 2021. Later this year, these papers will be moved to the website of that firm.***

### Obtaining Copies of Bills.

If you want to obtain copies of any of the bills, directions are contained in Part I of the main legislative update paper. Or, if you're viewing an electronic version of that paper, most of the bill numbers are hyperlinked to the bill's page on the legislative website. Click on the Text tab once there. If you want to read the final version, look for the Enrolled version.

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<sup>1</sup> In this supplement, "I" refers to Bill Pargaman, the author of this legislative update since the 2009 legislative session. However, this year, Meredith McIver has provided invaluable

assistance in preparing both the legislative update itself and this supplement.



### 2021 Amendments to the Texas Estates Code (Other Than Guardianship Provisions)

[The following excerpts reflect amendments made by HB 1297, HB 1514, HB 3774, SB 615, SB 626]

#### Sec. 33.101. TRANSFER TO OTHER COUNTY IN WHICH VENUE IS PROPER.

If probate proceedings involving the same estate are commenced in more than one county and the court making a determination of venue as provided by Section 33.053 determines that venue is proper in another county, the court clerk shall make and retain a copy of the entire file in the case and transmit the original file in electronic or paper form to the court in the county in which venue is proper. The court to which the file is transmitted shall conduct the proceeding in the same manner as if the proceeding had originally been commenced in that county.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 576 (SB 615), effective September 1, 2021.*

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021.*

#### Sec. 33.102. TRANSFER FOR WANT OF VENUE.

(a) If it appears to the court at any time before the final order in a probate proceeding is rendered that the court does not have priority of venue over the proceeding, the court shall, on the application of an interested person, transfer the proceeding to the proper county by transmitting to the proper court in that county in electronic or paper form:

- (1) the original file in the case; and
- (2) certified copies of all entries that have been made in the judge's probate docket in the proceeding.

(b) – (c) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 576 (SB 615), effective September 1, 2021.*

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021.*

#### Sec. 33.103. TRANSFER FOR CONVENIENCE.

(a) – (b) [No change.]

(c) The transmittal under Subsection (b) of the original file and the certified copy of the index may be in electronic or paper form, except that an original will filed in the probate proceeding, if any, must be delivered to the court to which the proceeding is transferred.

*Added by Acts 2021, 87<sup>th</sup> Legislature, Ch. 576 (SB 615), effective September 1, 2021.*

*Added by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021.*

#### Sec. 51.003. CONTENTS OF CITATION OR NOTICE.

(a) [No change.]

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

(c) – (d) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 576 (SB 615), effective September 1, 2021.*

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021.*

#### Sec. 51.103. PROOF OF SERVICE.

(a) [No change.]

(b) Proof of service consists of:

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

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

(3) if the service is made by mail:

(A) the certificate of the county clerk making the service, or the affidavit of the personal representative or other person making the service, stating that the citation or notice was mailed and the date of the mailing; and

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

(4) if the service is made by publication:

(A) a statement ~~[an affidavit]~~:

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

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

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

(B) an affidavit:

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

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

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

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 934 (HB 3774), effective September 1, 2021.*

**Sec. 55.053. SERVICE OF PROCESS.**

(a) For a will contest, the party contesting the will [The court] shall serve an institution or organization that is a necessary party to the contest under Section 55.052 in the manner provided by this title for service on other parties.

(b) For a will construction suit, the party bringing the suit shall serve an institution or organization that is a necessary party to the suit under Section 55.052 in the manner provided by this title for service on other parties.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 244 (HB 1297), effective September 1, 2021. Sec. 2 of HB 1297 provides: "Section 55.053, Estates Code, as amended by this Act, applies only to a will contest or will construction suit that is instituted on or after the effective date of this Act. A will contest or will construction suit that was instituted before the effective date of this Act is governed by the law in effect on the date the contest or suit was instituted, and the former law is continued in effect for that purpose."*

**Sec. 202.054. PERSONAL SERVICE OF CITATION MAY BE REQUIRED.**

(a) The court may require that service of citation in a proceeding to declare heirship be made by personal service on some or all of those named as distributees in the application filed under Section 202.005.

(b) If a distributee to be cited under Subsection (a) is absent from or is not a resident of this state, any disinterested person competent to make an oath that the citation was served may serve the citation.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 576 (SB 615), effective September 1, 2021. Section 32(a) of SB 615 provides: "Section 202.054, Estates Code, as amended by this Act, applies only to a proceeding to declare heirship commenced on or after the effective date of this Act. A proceeding to declare heirship commenced before that date is governed by the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose."*

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. Section 72(b) of SB 626 provides: "Section 202.054, Estates Code, as amended by this Act, applies only to a proceeding to declare heirship commenced on or after the effective date of this Act. A proceeding to declare heirship commenced before that date is governed by the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose."*

**Sec. 351.351. APPLICABILITY.**

This subchapter does not apply to:

(1) the appointment of an independent executor or administrator under Section 401.002 or 401.003(a); or

(2) the appointment of a successor independent administrator [~~executor~~] under Section 404.005.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 576 (SB 615), effective September 1, 2021.*

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021.*

**Sec. 404.0036. REMOVAL ORDER**

(a) [No change.]

(b) If an independent executor is removed by the court under Section 404.003 or 404.0035, the court may, on application, appoint a successor independent administrator [~~executor~~] as provided by Section 404.005.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 576 (SB 615), effective September 1, 2021.*

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021.*

**Sec. 404.005. COURT APPOINTED SUCCESSOR INDEPENDENT ADMINISTRATOR [~~EXECUTOR~~].**

(a) If the will of a person who dies testate names an independent executor who, having qualified, fails for any reason to continue to serve, or is removed for cause by the court, and the will does not name a successor independent executor or if each successor executor named in the will fails for any reason to qualify as executor or indicates by affidavit filed with the application for an order continuing independent administration the successor executor's inability or unwillingness to serve as successor independent executor, all of the distributees of the decedent as of the filing of the application for an order continuing independent administration may apply to the probate court for the appointment of a qualified person, firm, or corporation to serve as successor independent administrator [~~executor~~]. If the probate court finds that continued administration of the estate is necessary, the

court shall enter an order continuing independent administration and appointing the person, firm, or corporation designated in the application as successor independent administrator [~~executor~~], unless the probate court finds that it would not be in the best interest of the estate to do so. The successor independent administrator [~~executor~~] shall serve with all of the powers and privileges granted to the successor's predecessor independent executor.

(b) Except as otherwise provided by this subsection, if a distributee described in this section is an incapacitated person, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the probate court finds that either the continuing of independent administration or the appointment of the person, firm, or corporation designated in the application as successor independent administrator [~~executor~~] would not be in the best interest of the incapacitated person, then, notwithstanding Subsection (a), the court may not enter an order continuing independent administration of the estate. If the distributee is an incapacitated person and has no guardian of the person, the court may appoint a guardian ad litem to make application on behalf of the incapacitated person if the probate court considers such an appointment necessary to protect the interest of that distributee. If a distributee described in this section is a minor and has no guardian of the person, a natural guardian of the minor may sign the application for the order continuing independent administration on the minor's behalf unless a conflict of interest exists between the minor and the natural guardian.

(c) Except as otherwise provided by this subsection, if a trust is created in the decedent's will or if the decedent's will devises property to a trustee as described by Section 254.001, the person or class of persons entitled to receive property outright from the trust on the decedent's death and those first eligible to receive the income from the trust, determined as if the trust were to be in existence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be considered to be the distributee or distributees on behalf of the trust, and any other trust or trusts coming into existence on the termination of the trust, and are authorized to apply for an order continuing independent administration on behalf of the trust without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence on the termination of the trust. If a person considered to be a distributee under this subsection is an incapacitated person, the trustee or cotrustee may apply for the order continuing independent administration or sign the application on the

incapacitated person's behalf if the trustee or cotrustee is not the person proposed to serve as the independent administrator [~~executor~~].

(d) – (g) [No change.]

(h) If a successor independent administrator [~~executor~~] is appointed under this section, then, unless the probate court shall waive bond on application for waiver, the successor independent administrator [~~executor~~] shall be required to enter into bond payable to and to be approved by the judge and the judge's successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in an amount that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety.

(i) Absent proof of fraud or collusion on the part of a judge, the judge may not be held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as a successor independent administrator [~~executor~~] under this section. Section 351.354 does not apply to an appointment of a successor independent administrator [~~executor~~] under this section.

*Amended by Acts 2021, 87th Legislature, Ch. 576 (SB 615), effective September 1, 2021.*

*Amended by Acts 2021, 87th Legislature, Ch. 521 (SB 626), effective September 1, 2021.*

#### **Sec. 452.006. NOTICE OF APPOINTMENT.**

(a) – (b) [No change.]

(c) The appointee shall file with the court proof of service of the notice required under Subsection (a) in the manner provided by Section 51.103(b)(3).

*Added by Acts 2021, 87th Legislature, Ch. 576 (SB 615), effective September 1, 2021. Section 32(b) of SB 615 provides: "Section 452.006(c), Estates Code, as added by this Act, applies only to a temporary administrator appointed on or after the effective date of this Act. A temporary administrator appointed before the effective date of this Act is governed by the law in effect on the date the administrator was appointed, and the former law is continued in effect for that purpose."*

*Added by Acts 2021, 87th Legislature, Ch. 521 (SB 626), effective September 1, 2021. Section 72(c) of SB 626 provides: "Section 452.006(c), Estates Code, as added by this Act, applies only to a temporary administrator appointed on or after the effective date of this Act. A temporary administrator appointed before the effective date of this Act is governed by the law in effect on the date the administrator was appointed, and the former law is continued in effect for that purpose."*

**Sec. 503.002. RECORDING OF CERTAIN FOREIGN TESTAMENTARY INSTRUMENTS IN LANGUAGE OTHER THAN ENGLISH [ORIGINAL SIGNATURES NOT REQUIRED].**

(a) An authenticated copy of a will or other testamentary instrument described by Section 503.001(a), along with a copy of the judgment, order, or decree by which the instrument was admitted to probate that has the attestation and certificate required by Section 501.002(c), that is written in whole or in part in a language other than English may be filed for recording in the deed records in any county in this state in which the land conveyed or disposed of in the instrument is located if:

(1) a correct English translation is recorded with the authenticated copies of the will or other testamentary instrument and judgment, order, or decree by which the instrument was admitted to probate; and

(2) the accuracy of the translation is sworn to before an officer authorized to administer oaths [Notwithstanding Section 501.002(c), the original signatures required by that section may not be required for a recordation in the deed records in accordance with Section 503.001 or for a purpose described by Section 503.051 or 503.052].

(b) The recording of an authenticated copy of a will or other testamentary instrument and a copy of the judgment, order, or decree in the manner provided by Subsection (a) operates as constructive notice from the date of filing to all persons of the:

(1) existence of the instrument; and

(2) title or titles conferred by the instrument.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 576 (SB 615), effective September 1, 2021. Section 32(c) of SB 615 provides: “Section 503.002, Estates Code, as amended by this Act, applies only to a copy of a testamentary instrument or other document filed for recording on or after the effective date of this Act. A copy of a testamentary instrument or other document filed before the effective date of this Act is governed by the law in effect on the date the instrument or document was filed, and the former law is continued in effect for that purpose.”*

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. Section 72(d) of SB 626 provides: “Section 503.002, Estates Code, as amended by this Act, applies only to a copy of a testamentary instrument or other document filed for recording on or after the effective date of this Act. A copy of a testamentary instrument or other document filed before the effective date of this Act is governed by*

*the law in effect on the date the instrument or document was filed, and the former law is continued in effect for that purpose.”*

**Sec. 551.005. COMPTROLLER INDISPENSABLE PARTY.**

(a) [No change.]

(b) The clerk of a court that orders an executor or administrator to pay funds to the comptroller under Section 551.001 shall provide to ~~[serve on]~~ the comptroller, by certified mail or e-mail ~~[personal service of citation]~~, a certified copy of the court order not later than the fifth day after the date the order is issued.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 52 (HB 1514), effective May 18, 2021. Section 21 of HB 1514 provides: “This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.” HB 1514 received the required two-thirds majorities and was signed by the Governor May 18, 2021.*

*Section 20 of HB 1514 provides: “To the extent of any conflict, this Act prevails over another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.”*



## 2021 Amendments to the Texas Estates Code (Guardianship)

[The following excerpts reflect amendments made by HB 1296, HB 3394, HB 3774, SB 615, SB 626, SB 1129]

**Sec. 1021.001. MATTERS RELATED TO GUARDIANSHIP PROCEEDING.**

(a) For purposes of this code, in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, a matter related to a guardianship proceeding includes:

- (1) the granting of letters of guardianship;
- (2) the settling of an account of a guardian and all other matters relating to the settlement, partition, or distribution of a ward's estate;
- (3) a claim brought by or against a guardianship estate;
- (4) an action for trial of title to real property that is guardianship estate property, including the enforcement of a lien against the property;
- (5) an action for trial of the right of property that is guardianship estate property;
- (6) after a guardianship of the estate of a ward is required to be settled as provided by Section 1204.001:
  - (A) an action brought by or on behalf of the former ward against a former guardian of the ward for alleged misconduct arising from the performance of the person's duties as guardian;
  - (B) an action calling on the surety of a guardian or former guardian to perform in place of the guardian or former guardian, which may include the award of a judgment against the guardian or former guardian in favor of the surety;
  - (C) an action against a former guardian of the former ward that is brought by a surety that is called on to perform in place of the former guardian;
  - (D) a claim for the payment of compensation, expenses, and court costs, and any other matter authorized under Chapter 1155; and
  - (E) a matter related to an authorization made or duty performed by a guardian under Chapter 1204; and
- (7) the appointment of a trustee for a trust created under Section 1301.053 or 1301.054, the settling of an account of the trustee, and all other matters relating to the trust.

(a-1) For purposes of this code, in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate

jurisdiction, a matter related to a guardianship proceeding includes:

- (1) all matters and actions described in Subsection (a);
- (2) the interpretation and administration of a testamentary trust in which a ward is an income or remainder beneficiary; and
- (3) the interpretation and administration of an inter vivos trust in which a ward is an income or remainder beneficiary.

(b) For purposes of this code, in a county in which there is a statutory probate court, a matter related to a guardianship proceeding includes:

- (1) all matters and actions described in Subsections [Subsection] (a) and (a-1);
- (2) a suit, action, or application filed against or on behalf of a guardianship or a trustee of a trust created under Section 1301.053 or 1301.054; and
- (3) a cause of action in which a guardian in a guardianship pending in the statutory probate court is a party.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. Section 72(e) of SB 626 provides: "The changes in law made by this Act to Section 1021.001, Estates Code, apply only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect on the date the action was filed, and the former law is continued in effect for that purpose."*

**Sec. 1023.004. NOTICE.**

- (a) [No change.]
- (b) If an application is filed by a person other than the guardian ~~[or if a court made a motion to transfer a guardianship]~~, the guardian shall be cited by personal service to appear and show cause why the guardianship should not be transferred.
- (c) If a court made a motion to transfer a guardianship, the guardian shall be given notice by certified mail to appear and show cause why the guardianship should not be transferred.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 243 (HB 1296), effective September 1, 2021. Section 3 of HB 1296 provides: "Sections 1023.004 and 1203.052(b), Estates Code, as amended by this Act,*

apply to a guardianship proceeding commenced on or after the effective date of this Act.”

**Sec. 1023.005. COURT ACTION.**

(a) On hearing an application or motion under Section 1023.003, if ~~[good cause is not shown to deny the transfer and]~~ it appears that transfer of the guardianship is in the best interests of the ward and either the ward has resided in the county to which the guardianship is to be transferred for at least six months or good cause is not otherwise shown to deny the transfer, the court shall enter an order:

(1) authorizing the transfer on payment on behalf of the estate of all accrued costs; ~~[and]~~

(2) requiring that any existing bond of the guardian must remain in effect until a new bond has been given or a rider has been filed in accordance with Section 1023.010; and

(3) certifying that the guardianship is in compliance with this code at the time of transfer.

(b) In making a determination that the transfer is in the best interests of the ward under Subsection (a), the court may consider:

(1) the interests of justice;

(2) the convenience of the parties; and

(3) the preference of the ward, if the ward is 12 years of age or older.

(c) On receipt of an order described by Subsection (a), the county shall accept the transfer of the guardianship.

*Amended by Acts 2021, 87th Legislature, Ch. 382 (SB 1129), effective September 1, 2021. Section 6 of SB 1129 provides: “The changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act.”*

**Sec. 1023.006. TRANSFER OF RECORD.**

When an order of transfer is made under Section 1023.005, the clerk shall record any unrecorded papers of the guardianship required to be recorded. On payment of the clerk’s fee, the clerk shall transmit in electronic or paper form to the county clerk of the county to which the guardianship was ordered transferred:

(1) the case file of the guardianship proceedings; and

(2) a certified copy of the index of the guardianship records.

*Amended by Acts 2021, 87th Legislature, Ch. 576 (SB 615), effective September 1, 2021.*

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. Sec. 72(a) of SB 626 provides: “Except as otherwise provided by this Act, the changes in law made by this Act apply to:(1) a guardianship created before, on, or after the effective date of this Act; and (2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.”*

**Sec. 1023.007. TRANSFER EFFECTIVE.**

The order transferring a guardianship does not take effect until:

(1) the case file and a certified copy of the index required by Section 1023.006 are filed in electronic or paper form in the office of the county clerk of the county to which the guardianship was ordered transferred; and

(2) a certificate under the clerk’s official seal and reporting the filing of the case file and a certified copy of the index is filed in electronic or paper form in the court ordering the transfer by the county clerk of the county to which the guardianship was ordered transferred.

*Amended by Acts 2021, 87th Legislature, Ch. 576 (SB 615), effective September 1, 2021.*

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

**Sec. 1023.008. CONTINUATION OF GUARDIANSHIP.**

(a) When a guardianship is transferred from one county to another in accordance with this chapter:

(1) ~~[;]~~ the guardianship proceeds in the court to which it was transferred as if it had been originally commenced in that court;

(2) the court to which the guardianship is transferred becomes the court of continuing, exclusive jurisdiction;

(3) a proceeding relating to the guardianship that is commenced in the court ordering the transfer continues in the court to which the guardianship is transferred as if the proceeding commenced in the receiving court;

(4) a judgment or order entered in the guardianship before the transfer has the same effect and must be enforced as a judgment or order entered by the court to which the guardianship is transferred; and

(5) the court ordering the transfer does not retain;

(A) jurisdiction of the ward who is the subject of the guardianship; and

(B) the authority to enforce an order entered for a violation of this title that occurred before or after the transfer.

(b) It is not necessary to record in the receiving court any of the papers in the case that were recorded in the court from which the case was transferred.

*Amended by Acts 2021, 87th Legislature, Ch. 382 (SB 1129), effective September 1, 2021. See transitional note following Sec. 1023.005.*

**Sec. 1023.011. CONTINUATION OF GUARDIANSHIP.**

(a) When a guardianship is transferred from one county to another in accordance with this chapter, a judge of the court from which the guardianship is transferred may not be held civilly liable for any injury, damage, or loss to the ward or the ward's estate that occurs after the transfer.

(b) A judge of the court to which a guardianship is transferred as described by Subsection (a) may not be held civilly liable for any injury, damage, or loss to the ward or the ward's estate that occurred before the transfer.

*Added by Acts 2021, 87th Legislature, Ch. 382 (SB 1129), effective September 1, 2021. See transitional note following Sec. 1023.005.*

**Sec. 1051.003. CONTENTS OF CITATION OR NOTICE.**

(a) [No change.]

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

(c) – (d) [No change.]

*Amended by Acts 2021, 87th Legislature, Ch. 576 (SB 615), effective September 1, 2021.*

*Amended by Acts 2021, 87th Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

**Sec. 1051.153. PROOF OF SERVICE.**

(a) [No change.]

(b) Proof of service consists of:

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

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

(3) if the service is made by mail:

(A) the certificate of the county clerk making the service, or the affidavit of the guardian or

other person making the service that states that the citation or notice was mailed and the date of the mailing; and

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

(4) if the service is made by publication:

(A) a statement [an affidavit] that:

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

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

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

(B) an affidavit that:

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

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

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

*Amended by Acts 2021, 87th Legislature, Ch. 934 (HB 3774), effective September 1, 2021.*

**Sec. 1052.052. CASE FILES.**

(a) [No change.]

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

(1) application for the granting of guardianship;

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

(3) bond and official oath or declaration;

(4) inventory, appraisal, and list of claims;

(5) exhibit and account;

(6) report of renting;

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

(8) report of sale;

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

(10) report of lending or investing money; and

(11) report of guardians of the persons.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

## **CHAPTER 1054. COURT OFFICERS, ~~AND~~ COURT-APPOINTED PERSONS, AND ATTORNEYS**

### **SUBCHAPTER E. QUALIFICATIONS TO SERVE AS ~~COURT-APPOINTED~~ ATTORNEY**

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 576 (SB 615), effective September 1, 2021.*

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021.*

#### **Sec. 1054.201. CERTIFICATION REQUIRED.**

(a) Except as provided by Subsection (c), an ~~An~~ attorney representing any person's interests ~~for an applicant for guardianship and a court appointed attorney~~ in a guardianship proceeding, including an attorney ad litem, must be certified by the State Bar of Texas, or a person or other entity designated by the state bar, as having successfully completed a course of study in guardianship law and procedure sponsored by the state bar or the state bar's designee.

(b) [No change.]

(c) An attorney may commence representation of a person's interests and file an appearance in a guardianship proceeding before completing the course required for certification under Subsection (a), but must complete the course not later than the 14th day after the date of filing the appearance and before filing any substantive motion in the guardianship proceeding.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 576 (SB 615), effective September 1, 2021. Section 32(e) of SB 615 provides: "Sections 1054.201 and 1101.153, Estates Code, as amended by this Act, and Section 155.205, Government Code, as amended by this Act, apply only to a guardianship proceeding commenced on or after the effective date of this Act. A guardianship proceeding commenced before the effective date of this Act is governed by the law applicable to the proceeding immediately before the effective date of this Act, and the former law is continued in effect for that purpose."*

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. Section 72(g) of SB 626 provides: "Sections 1054.201 and 1101.153,*

*Estates Code, as amended by this Act, and Section 155.205, Government Code, as amended by this Act, apply only to a guardianship proceeding commenced on or after the effective date of this Act. A guardianship proceeding commenced before the effective date of this Act is governed by the law applicable to the proceeding immediately before the effective date of this Act, and the former law is continued in effect for that purpose."*

#### **Sec. 1055.151. MEDIATION OF CONTESTED GUARDIANSHIP PROCEEDING.**

(a) Subject to Subsection (b), on ~~On~~ the written agreement of the parties or on the court's own motion, the court may refer a contested guardianship proceeding to mediation.

(b) If the court refers to mediation a proceeding under Subsection (a) regarding the appointment of a guardian for a proposed ward:

(1) a determination of incapacity of the proposed ward may be an issue to be mediated, but the applicant for guardianship must still prove to the court that the proposed ward is an incapacitated person in accordance with the requirements of Chapter 1101; and

(2) all parties to the proceeding shall evaluate during the mediation alternatives to guardianship and supports and services available to the proposed ward, including whether the supports and services and alternatives to guardianship would be feasible to avoid the need for appointment of a guardian.

(c) The cost of mediation shall be paid by the parties to the proceeding unless otherwise ordered by the court. If the parties are unable to pay the cost of mediation, the court may refer the parties to a local alternative dispute resolution center providing services as part of a system for resolution of disputes established under Section 152.002, Civil Practice and Remedies Code, if a system has been established in the county, and the local center may waive mediation costs as appropriate.

(d) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 382 (SB 1129), effective September 1, 2021. See transitional note following Sec. 1023.005.*

#### **Sec. 1055.152. MEDIATED SETTLEMENT AGREEMENTS.**

(a) A mediated settlement agreement is binding on the parties if the agreement:

(1) provides, in a prominently displayed statement that is in boldfaced type, in capital letters, or underlined, that the agreement is not subject to revocation by the parties;

(2) is signed by each party to the agreement; and

(3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.

~~(b)~~ [(e)] If a mediated settlement agreement meets the requirements of this section, a party is entitled to judgment on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule or law.

~~(c)~~ [(d)] Notwithstanding Subsections (a) and (b) [~~and (e)~~], a court may decline to enter a judgment on a mediated settlement agreement if the court finds that the agreement is not in the ward's or proposed ward's best interests.

*Amended by Acts 2021, 87th Legislature, Ch. 382 (SB 1129), effective September 1, 2021. See transitional note following Sec. 1023.005.*

#### **Sec. 1101.001. APPLICATION FOR APPOINTMENT OF GUARDIAN; CONTENTS.**

(a) [No change.]

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

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

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

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

(3-a) whether alternatives to guardianship and available supports and services to avoid guardianship were considered;

(3-b) whether any alternatives to guardianship and supports and services available to the proposed ward considered are feasible and would avoid the need for a guardianship;

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

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

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

(C) the right of a proposed ward to make personal decisions regarding residence;

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

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

(7) the nature and description of any kind of guardianship existing for the proposed ward in any other state;

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

(9) the approximate value and a detailed description of the proposed ward's property, including:

(A) liquid assets, including any compensation, pension, insurance, or allowance to which the proposed ward may be entitled; and

(B) non-liquid assets, including real property;

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

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

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

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

(C) if each of the proposed ward's parents and adult siblings are deceased, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults;

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

(A) the court involved;

(B) the nature of the proceeding; and

(C) any final disposition of the proceeding;

(13) for a proposed ward who is an adult, the following information if known by the applicant:

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

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

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

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

(E) if there is no living spouse, parent, adult sibling, or adult child of the proposed ward, the names and addresses of the proposed ward’s other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults;

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

(15) if applicable, that the person whom the applicant seeks to have appointed as a guardian is a private professional guardian who is certified under Subchapter C, Chapter 155, Government Code, and has complied with the requirements of Subchapter G, Chapter 1104.

(c) [No change.]

*Amended by Acts 2021, 87th Legislature, Ch. 576 (SB 615), effective September 1, 2021. Section 32(d) of SB 615 provides: “Sections 1101.001 and 1251.005, Estates Code, as amended by this Act, apply only to an application for the appointment of a guardian or temporary guardian filed on or after the effective date of this Act. An application for the appointment of a guardian or temporary guardian filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.”*

*Amended by Acts 2021, 87th Legislature, Ch. 521 (SB 626), effective September 1, 2021. Section 72(f) of SB 626 provides: “Sections 1101.001 and 1251.005, Estates Code, as amended by this Act, apply only to an application for the appointment of a guardian or temporary guardian filed on or after the effective date of this Act. An application for the appointment of a guardian or temporary guardian filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.”*

**Sec. 1101.153. GENERAL CONTENTS OF ORDER APPOINTING GUARDIAN.**

(a) A court order appointing a guardian must:

(1) specify:

(A) [(4)] the name of the person appointed;

(B) [(2)] the name of the ward;

(C) [(3)] whether the guardian is of the person or estate of the ward, or both;

(D) [(4)] the amount of any bond required;

(E) [(5)] if it is a guardianship of the estate of the ward and the court considers an appraisal to be necessary, one, two, or three disinterested persons to appraise the estate and to return the appraisal to the court; and

(F) [(6)] that the clerk will issue letters of guardianship to the person appointed when the person has qualified according to law; and

(2) if the court waives the guardian’s training requirement, contain a finding that the waiver is in accordance with rules adopted by the supreme court under Section 155.203, Government Code.

(a-1) – (c) [No change.]

*Amended by Acts 2021, 87th Legislature, Ch. 576 (SB 615), effective September 1, 2021. See transitional note following Sec. 1054.201.*

*Amended by Acts 2021, 87th Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1054.201.*

**Sec. 1103.003. EFFECTIVE DATE OF GUARDIANSHIP.**

If the application filed under Section 1103.001 is heard before the proposed ward’s 18th birthday, a guardianship created under this chapter may not take effect and the person appointed guardian may not take the oath or make the declaration as required under Section 1105.051 or give a bond as required under Section 1105.101 until the proposed ward’s 18th birthday.

*Amended by Acts 2021, 87th Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

**Sec. 1105.001. DEFINITIONS.**

(1) [No change.]

(1-a) “Declaration” means a declaration taken by a person appointed to serve as a guardian to qualify to serve.

(2) “Oath” means an oath [required by this chapter to be] taken by a person appointed to serve as a guardian to qualify to serve.

*Amended by Acts 2021, 87th Legislature, Ch. 521 (SB 626), effective September 1, 2021. Section 72(h) of SB 626 provides: “The changes in law made by this Act to Section 1251.101, Estates Code, and Chapter 1105,*

*Estates Code, apply only to the qualification of a guardian that occurs on or after the effective date of this Act. The qualification of a guardian that occurs before the effective date of this Act is governed by the law in effect on the date the guardian qualifies to serve, and the former law is continued in effect for that purpose."*

### **Sec. 1105.002. MANNER OF QUALIFICATION OF GUARDIAN.**

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

- (1) taken and filed the oath, or made and filed the declaration, required under Section 1105.051;
- (2) given the required bond;
- (3) filed the bond with the clerk; and
- (4) obtained the judge's approval of the bond.

(b) A guardian who is not required to give a bond is considered to have qualified when the guardian has taken and filed the ~~[required]~~ oath, or made and filed the declaration, as required under Section 1105.051.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1105.001.*

### **Sec. 1105.003. PERIOD FOR TAKING OATH OR MAKING DECLARATION AND GIVING BOND.**

(a) Except as provided by Section 1103.003, an oath may be taken and subscribed or a declaration may be made, and a bond may be given and approved, at any time before:

- (1) the 21st day after the date of the order granting letters of guardianship; or
- (2) the letters of guardianship are revoked for a failure to qualify within the period allowed.

(b) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1105.001.*

## **CHAPTER 1105. QUALIFICATION OF GUARDIANS**

### **SUBCHAPTER B. OATHS AND DECLARATIONS**

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1105.001.*

### **Sec. 1105.051. OATH OR DECLARATION OF GUARDIAN.**

(a) A guardian shall:

(1) take an oath to discharge faithfully the duties of guardian for the person or estate, or both, of a ward; or

(2) make a declaration as prescribed by Subsection (d).

(b) If the Health and Human [Department of Aging and Disability] Services Commission is appointed guardian, a commission [department] representative shall take the oath or make the declaration required by Subsection (a).

(c) An oath taken by a person named as guardian or temporary guardian, as applicable, must be substantially as follows:

I, \_\_\_\_\_ (insert person's name), do solemnly swear that I will discharge faithfully the duties of guardian of \_\_\_\_\_ (insert "the person," "the estate," or "the person and estate") of \_\_\_\_\_ (insert ward's name), an incapacitated person, according to law.

(d) A declaration made by a person named as guardian or temporary guardian, as applicable, must be substantially as follows:

My name is \_\_\_\_\_ (insert person's name), my date of birth is \_\_\_\_\_ (insert person's date of birth), and my address is \_\_\_\_\_ (insert person's address, including country). I declare under penalty of perjury that the information in this declaration is true and correct. I solemnly declare that I will discharge faithfully the duties of \_\_\_\_\_ (insert "guardian" or "temporary guardian," as applicable) of \_\_\_\_\_ (insert "the person," "the estate," or "the person and estate") of \_\_\_\_\_ (insert ward's name), an incapacitated person, according to law. Signed on \_\_\_\_\_ (insert date of signing).

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1105.001.*

### **Sec. 1105.052. ADMINISTRATION OF OATH OR MAKING OF DECLARATION.**

The ~~[An]~~ oath prescribed by Section 1105.051 may be taken before any person authorized to administer oaths under the laws of this state. The declaration prescribed by Section 1105.051 must be signed by the declarant.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1105.001.*

### **Sec. 1105.103. BOND REQUIRED FROM GUARDIAN OTHERWISE EXEMPT.**

(a) – (e) [No change.]

(f) If the guardian fails to give the bond required under Subsection (d) and the judge has not extended the period for giving the bond, the judge, without citation, shall remove the guardian and appoint a competent person as guardian, who shall:

(1) administer the guardianship according to the provisions of a will or law;

(2) take the oath or make the declaration required of a guardian under Section 1105.051 before the person enters on the administration of the guardianship; and

(3) give bond in the same manner and in the same amount provided by this title for the issuance of original letters of guardianship.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1105.001.*

**Sec. 1151.005. LEGAL PROCEEDINGS IN WHICH WARD IS PARTY OR WITNESS.**

The guardian of the person or of the estate of a ward may not be excluded from attending a legal proceeding in which the ward is:

(1) a party; or

(2) participating as a witness.

*Added by Acts 2021, 87<sup>th</sup> Legislature, Ch. 576 (SB 615), effective September 1, 2021.*

*Added by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

**Sec. 1151.351. BILL OF RIGHTS FOR WARDS.**

(a) [No change.]

(b) Unless limited by a court or otherwise restricted by law, a ward is authorized to the following:

(1) to have a copy of the guardianship order and letters of guardianship and contact information for the probate court that issued the order and letters;

(2) to have a guardianship that encourages the development or maintenance of maximum self-reliance and independence in the ward with the eventual goal, if possible, of self-sufficiency;

(3) to be treated with respect, consideration, and recognition of the ward's dignity and individuality;

(4) to reside and receive support services in the most integrated setting, including home-based or other community-based settings, as required by Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.);

(5) to consideration of the ward's current and previously stated personal preferences, desires, medical and psychiatric treatment preferences, religious beliefs, living arrangements, and other preferences and opinions;

(6) to financial self-determination for all public benefits after essential living expenses and health needs are met and to have access to a monthly personal allowance;

(7) to receive timely and appropriate health care and medical treatment that does not violate the ward's rights granted by the constitution and laws of this state and the United States;

(8) to exercise full control of all aspects of life not specifically granted by the court to the guardian;

(9) to control the ward's personal environment based on the ward's preferences;

(10) to complain or raise concerns regarding the guardian or guardianship to the court, including living arrangements, retaliation by the guardian, conflicts of interest between the guardian and service providers, or a violation of any rights under this section;

(11) to receive notice in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward, of a court proceeding to continue, modify, or terminate the guardianship and the opportunity to appear before the court to express the ward's preferences and concerns regarding whether the guardianship should be continued, modified, or terminated;

(12) to have a court investigator or[;] guardian ad litem[; ~~or attorney ad litem~~] appointed by the court to investigate a complaint received by the court from the ward or any person about the guardianship;

(13) to participate in social, religious, and recreational activities, training, employment, education, habilitation, and rehabilitation of the ward's choice in the most integrated setting;

(14) to self-determination in the substantial maintenance, disposition, and management of real and personal property after essential living expenses and health needs are met, including the right to receive notice and object about the substantial maintenance, disposition, or management of clothing, furniture, vehicles, and other personal effects;

(15) to personal privacy and confidentiality in personal matters, subject to state and federal law;

(16) to unimpeded, private, and uncensored communication and visitation with persons of the ward's choice, except that if the guardian determines that certain



communication or visitation causes substantial harm to the ward:

(A) the guardian may limit, supervise, or restrict communication or visitation, but only to the extent necessary to protect the ward from substantial harm; and

(B) the ward may request a hearing to remove any restrictions on communication or visitation imposed by the guardian under Paragraph (A);

(17) to petition the court and retain counsel of the ward's choice who holds a certificate required by Subchapter E, Chapter 1054, to represent the ward's interest for capacity restoration, modification of the guardianship, the appointment of a different guardian, or for other appropriate relief under this subchapter, including a transition to a supported decision-making agreement, except as limited by Section 1054.006;

(18) to vote in a public election, marry, and retain a license to operate a motor vehicle, unless restricted by the court;

(19) to personal visits from the guardian or the guardian's designee at least once every three months, but more often, if necessary, unless the court orders otherwise;

(20) to be informed of the name, address, phone number, and purpose of Disability Rights Texas, an organization whose mission is to protect the rights of, and advocate for, persons with disabilities, and to communicate and meet with representatives of that organization;

(21) to be informed of the name, address, phone number, and purpose of an independent living center, an area agency on aging, an aging and disability resource center, and the local mental health and intellectual and developmental disability center, and to communicate and meet with representatives from these agencies and organizations;

(22) to be informed of the name, address, phone number, and purpose of the Judicial Branch Certification Commission and the procedure for filing a complaint against a certified guardian;

(23) to contact the Department of Family and Protective Services to report abuse, neglect, exploitation, or violation of personal rights without fear of punishment, interference, coercion, or retaliation;

(24) to have the guardian, on appointment and on annual renewal of the guardianship, explain the rights delineated in this subsection in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward; and

(25) to make decisions related to sexual assault crisis services, including consenting to a forensic medical examination and treatment, authorizing the collection of forensic evidence, consenting to the release of evidence contained in an evidence collection kit and disclosure of related confidential information, and receiving counseling and other support services.

(c) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

#### **Sec. 1153.001. REQUIRED NOTICE REGARDING PRESENTMENT OF CLAIMS IN GENERAL.**

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

(1) published in a newspaper of general circulation [~~printed~~] in the county in which the letters were issued; and

(2) sent to the comptroller by certified or registered mail, if the ward remitted or should have remitted taxes administered by the comptroller.

(b) [No change.]

(c) If there is no [a] newspaper of general circulation [~~is not printed~~] in the county in which the letters of guardianship were issued, the notice must be posted and the return made and filed as otherwise required by this title.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

#### **Sec. 1155.054. PAYMENT OF ATTORNEY'S FEES TO CERTAIN ATTORNEYS.**

(a) – (c) [No change.]

(d) If the court finds that a party in a guardianship proceeding acted in bad faith or without just cause in prosecuting or objecting to an application in the proceeding, the court may order [~~require~~] the party to reimburse the ward's estate for all or part of the attorney's fees awarded under this section and shall issue judgment against the party and in favor of the estate for the amount of attorney's fees ordered [~~required~~] to be reimbursed to the estate.

(e) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

**Sec. 1158.105. REPORT; EVIDENCE OF TITLE.**

(a) A successful bid or contract for the sale of estate personal property shall be reported to the court. The laws regulating the approval [~~confirmation~~] or disapproval of a sale of real estate apply to the sale [~~of personal property~~], except that a conveyance is not required.

(b) – (c) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

**CHAPTER 1158. SALE OR PARTITION OF WARD'S PROPERTY****SUBCHAPTER I. SALE OF REAL ESTATE: PUBLIC AUCTION [SALE]**

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021.*

**Sec. 1158.401. REQUIRED NOTICE.**

(a) A public sale of real estate of an estate shall be made at public auction. Except as otherwise provided by Section 1158.403(c) [~~this title~~], the guardian of the estate shall advertise a public auction [~~sale~~] of real estate of the estate by a notice published in the county in which the estate is pending, as provided by this title for publication of notices or citations. The notice must [~~include a reference to~~]:

(1) include a reference to the order of sale;

(2) include the time, place, and required terms of sale; and

(3) briefly describe [~~a brief description of~~] the real estate to be sold.

(b) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

**Sec. 1158.402. COMPLETION [METHOD] OF AUCTION [SALE].**

A public auction [~~sale~~] of real estate of an estate shall be completed on the bid of [~~made at public auction to~~] the highest bidder.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

**Sec. 1158.403. TIME AND PLACE OF AUCTION [SALE].**

(a) Except as provided by Subsection (c), a public auction [~~sale~~] of real estate of an estate shall be held [~~made~~] at:

(1) the courthouse door in the county in which the real estate is located, or if the real estate is located in more than one county, the courthouse door in any county in which the real estate is located [~~guardianship proceedings are pending~~]; or

(2) another place in a [~~that~~] county described by Subdivision (1) at which auctions [~~sales~~] of real estate are specifically authorized to be held as designated by the commissioners court of the county under Section 51.002(a), Property Code [~~made~~].

(b) Except as otherwise provided by this subsection, the auction [~~The sale~~] must occur between 10 a.m. and 4 p.m. on the first Tuesday of the month after publication of notice has been completed. If the first Tuesday of the month occurs on January 1 or July 4, the auction must occur between 10 a.m. and 4 p.m. on the first Wednesday of the month.

(c) If the court considers it advisable, the court may order the auction [~~sale~~] to be held [~~made~~] in the county in which the proceedings are pending [~~real estate is located~~], in which event notice shall be published both in that county and in the county in which the real estate is located [~~proceedings are pending~~].

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

**Sec. 1158.404. CONTINUANCE OF AUCTION [SALE].**

(a) A public auction [~~sale~~] of real estate of an estate that is not completed on the day advertised may be continued from day to day by an oral public announcement of the continuance made at the conclusion of the auction [~~sale~~] each day.

(b) A continued auction [~~sale~~] must occur within the hours prescribed by Section 1158.403(b).

(c) The continuance of an auction [~~a sale~~] under this section shall be shown in the report [~~of the sale~~] made to the court under Section 1158.551.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

**Sec. 1158.405. FAILURE OF BIDDER TO COMPLY.**

(a) If a person who successfully bids on real estate of the guardianship estate offered [~~for sale~~] at public auction fails to comply with the terms of the bid [~~sale~~],

the property [~~real estate~~] shall be readvertised and auctioned [~~sold~~] without any further order.

(b) The person defaulting on a bid as described by Subsection (a) is liable for payment to the guardian of the estate, for the estate's benefit, of:

(1) 10 percent of the amount of the bid; and

(2) the amount of any deficiency in price on the second auction [~~sale~~].

(c) The guardian shall recover the amounts under Subsection (b) by suit in any court in the county in which the auction [~~sale~~] was held [~~made~~] that has jurisdiction over the amount claimed.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

#### **SUBCHAPTER J. SALE OF REAL ESTATE: CONTRACT FOR PRIVATE SALE**

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021.*

##### **Sec. 1158.451. TERMS [~~MANNER~~] OF SALE.**

The guardian of the estate may enter into a contract for the [~~A~~] private sale of real estate of the estate [~~shall be~~] made in the manner the court directs in the order of sale. Unless the court directs otherwise, additional advertising, notice, or citation concerning the sale is not required.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

##### **Sec. 1158.502. PROCEDURE.**

The procedure for the sale of an easement or right-of-way authorized under Section 1158.501 is the same as the procedure provided by law for a private sale of real property of a ward by contract [~~at private sale~~].

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

#### **SUBCHAPTER L. APPROVAL [~~CONFIRMATION~~] OF SALE OF REAL PROPERTY AND TRANSFER OF TITLE**

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

##### **Sec. 1158.551. REPORT.**

A successful bid or private contract for the sale of estate real property shall be reported to the court ordering the sale not later than the 30th day after the date

the bid [~~sale~~] is made or the property is placed under contract. The report must:

(1) be in writing, sworn to, and filed with the clerk;

(2) include:

(A) the date of the order of sale;

(B) a description of the property being sold;

(C) the time and place of the auction or date the property is placed under contract [~~sale~~];

(D) the purchaser's name;

(E) the amount of the successful bid or the purchase price for [~~which~~] each parcel of property or interest in the parcel of property auctioned or placed under contract [~~was sold~~];

(F) the terms of the sale;

(G) whether the proposed sale of the property was made at public auction or by contract [~~privately~~]; and

(H) whether the purchaser is ready to comply with the order of sale; and

(3) be noted on the guardianship docket.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

##### **Sec. 1158.552. ACTION OF COURT ON REPORT [~~OF SALE~~].**

After the expiration of five days from the date a report [~~of sale~~] is filed under Section 1158.551, the court shall:

(1) consider [~~inquire into~~] the manner in which the auction described in the report was held or the contract described in the report [~~sale~~] was entered into [~~made~~];

(2) consider [~~hear~~] evidence in support of or against the report; and

(3) determine the sufficiency or insufficiency of the guardian's general bond, if any has been required and given.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

##### **Sec. 1158.553. APPROVAL [~~CONFIRMATION~~] OF SALE WHEN BOND NOT REQUIRED.**

If the guardian of the estate of a ward is not required by Subtitle D to give a general bond, the court may approve [~~confirm~~] the sale of estate real property in the

manner provided by Section 1158.556(a) if the court finds that the sale is satisfactory and made in accordance with law.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

#### **Sec. 1158.554. SUFFICIENCY OF BOND.**

(a) If the guardian of an estate is required by Subtitle D to give a general bond, before the court approves [~~confirms~~] any sale of real estate, the court shall determine whether the bond is sufficient to protect the estate after the sale proceeds are received.

(b) If the court finds that the general bond is sufficient, the court may approve [~~confirm~~] the sale as provided by Section 1158.556(a).

(c) If the court finds that the general bond is insufficient, the court may not approve [~~confirm~~] the sale until the general bond is increased to the amount required by the court, or an additional bond is given, and approved by the court.

(d) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

#### **Sec. 1158.556. APPROVAL [~~CONFIRMATION~~] OR DISAPPROVAL ORDER.**

(a) If the court is satisfied that the proposed sale of real property [~~a sale~~] reported under Section 1158.551 is [~~was~~] for a fair price, [~~was~~] properly made, and [~~was~~] in conformity with law, and the court has approved any increased or additional bond that the court found necessary to protect the estate, the court shall enter an order:

- (1) approving [~~confirming~~] the sale;
- (2) showing conformity with [~~the provisions of~~] this chapter [~~relating to the sale~~];
- (3) detailing the terms of the sale; and
- (4) authorizing the guardian of the estate to convey the property on the purchaser's compliance with the terms of the sale.

(b) If the court is not satisfied that the proposed sale of real property is [~~was~~] for a fair price, [~~was~~] properly made, and [~~was~~] in conformity with law, the court shall enter [~~issue~~] an order setting aside the bid or contract [~~sale~~] and ordering a new sale to be made, if necessary.

(c) The court's action in approving [~~confirming~~] or disapproving a report under Section 1158.551 [~~of a sale~~] has the effect of a final judgment. Any person interested

in the guardianship estate or in the sale is entitled to have an order entered under this section reviewed as in other final judgments in probate proceedings.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

#### **Sec. 1158.557. DEED.**

Real estate of an estate that is sold shall be conveyed by a proper deed that refers to and identifies the court order approving [~~confirming~~] the sale. The deed:

(1) vests in the purchaser all right and title of the estate to, and all interest of the estate in, the property; and

(2) is prima facie evidence that the sale has met all applicable requirements of the law.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

#### **Sec. 1158.558. DELIVERY OF DEED.**

(a) After the court has approved [~~confirmed~~] a sale and the [~~one~~] purchaser has complied with the terms of the sale, the guardian of the estate shall promptly execute and deliver to the purchaser a proper deed conveying the property.

(b) – (c) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

#### **Sec. 1163.005. VERIFICATION OF ACCOUNT AND STATEMENT REGARDING TAXES AND STATUS AS GUARDIAN.**

(a) The guardian of the estate shall attach to an account the guardian's affidavit stating:

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

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

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

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

(5) if the guardian is a private professional guardian, a guardianship program, or the Health and

Human Services Commission [~~Department of Aging and Disability Services~~], whether the guardian or an individual certified under Subchapter C, Chapter 155 [44], Government Code, who is providing guardianship services to the ward and who is swearing to the account on the guardian's behalf, is or has been the subject of an investigation conducted by the Judicial Branch [~~Guardianship~~] Certification Commission [~~Board~~] during the accounting period.

(b) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

**Sec. 1163.101. ANNUAL REPORT REQUIRED.**

(a) – (b) [No change.]

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

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

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

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

(A) the ward's own home;

(B) a nursing home;

(C) a guardian's home;

(D) a foster home;

(E) a boarding home;

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

(G) a hospital or medical facility; or

(H) another type of residence;

(4) statements indicating:

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

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

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

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

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

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

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

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

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

(i) a physician;

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

(iii) a dentist;

(iv) a social or other caseworker; or

(v) any other individual who provided treatment;

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

(6) the guardian's evaluation of:

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

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

(C) unmet needs of the ward;

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

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

(9) if the guardian is a private professional guardian, a guardianship program, or the Health and Human Services Commission [~~Department of Aging and Disability Services~~], whether the guardian or an individual certified under Subchapter C, Chapter 155, Government Code, who is providing guardianship services to the ward and who is filing the affidavit on the guardian's behalf, is or has been the subject of an investigation conducted by the Judicial Branch

[Guardianship] Certification Commission [~~Board~~] during the preceding year; and

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

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

(B) if applicable, the number of times the guardian has filed for emergency detention and the dates of the applications for emergency detention.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

**Sec. 1203.052. REMOVAL WITH NOTICE.**

(a) Subject to Subsection (c), the [~~The~~] court may remove a guardian as provided by Subsection (a-1) if:

(1) sufficient grounds appear to support a belief that the guardian has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, any of the property entrusted to the guardian’s care;

(2) the guardian fails to return any account or report that is required by law to be made;

(3) the guardian fails to obey a proper order of the court that has jurisdiction with respect to the performance of the guardian’s duties;

(4) the guardian is proved to have been guilty of gross misconduct or mismanagement in the performance of the guardian’s duties;

(5) the guardian:

(A) becomes incapacitated;

(B) is sentenced to the penitentiary; or

(C) from any other cause, becomes incapable of properly performing the duties of the guardian’s trust;

(6) the guardian has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation, as those terms are defined by Section 48.002, Human Resources Code, if engaged in with respect to an elderly person or [~~disabled~~] person with a disability, as defined by that section;

(7) the guardian neglects to educate or maintain the ward as liberally as the means of the ward’s estate and the ward’s ability or condition permit;

(8) the guardian interferes with the ward’s progress or participation in programs in the community;

(9) the guardian fails to comply with the requirements of Subchapter G, Chapter 1104;

(10) the court determines that, because of the dissolution of the joint guardians’ marriage, the termination of the guardians’ joint appointment and the continuation of only one of the joint guardians as the sole guardian is in the best interest of the ward; or

(11) the guardian would be ineligible for appointment as a guardian under Subchapter H, Chapter 1104.

(a-1) [No change.]

(b) In addition to the authority granted to the court under Subsection (a), the court may, on the complaint of the guardianship certification program of the Judicial Branch Certification Commission, remove a guardian who would be ineligible for appointment under Subchapter H, Chapter 1104, because of the guardian’s failure to maintain the certification required under Subchapter F, Chapter 1104. The guardian shall be given notice, by certified mail, return receipt requested, [eited] to appear and contest the request for removal under this subsection at a time and place set in the notice [in the manner provided by Subsection (a)].

(c) If there is probable cause to believe that a guardian is an incapacitated person, a court may, on the court’s own motion or on complaint of an interested person, appoint an attorney ad litem to represent the ward’s interests as provided by Section 1054.007 and a court investigator or guardian ad litem to investigate whether the guardian should be removed under Subsection (a)(5)(A). If the court determines it is necessary, the court may appoint the necessary physicians to examine the guardian to determine whether the guardian is an incapacitated person for purposes of Subsection (a)(5)(A).

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 273 (HB 3394), effective September 1, 2021. Section 2 of HB 3394 provides: “The changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act.”*

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 243 (HB 1296), effective September 1, 2021. See transitional note following Sec. 1023.004.*

**Sec. 1251.005. CITATION AND NOTICE OF APPLICATION.**

(a) On the filing of an application for temporary guardianship, the court clerk shall issue:

(1) citation [~~notice~~] to be served on:

(A) [~~(+)~~] the proposed ward; and

~~(B) [(2) the proposed ward's appointed attorney; and~~

~~[(3)] the proposed temporary guardian named in the application, if that person is not the applicant; and~~

(2) notice to be served on the proposed ward's appointed attorney.

(b) The citation or notice issued as provided by Subsection (a) must describe:

(1) the rights of the parties; and

(2) the date, time, place, purpose, and possible consequences of a hearing on the application.

(b-1) The citation issued as provided by Subsection (a) must contain a statement regarding the authority of a person under Section 1051.252 who is interested in the estate or welfare of a proposed ward or, if a guardianship is created, the ward to file with the county clerk a written request to be notified of all, or any specified, motions, applications, or pleadings filed with respect to the temporary guardianship proceeding by any person or by a person specifically designated in the request.

(c) A copy of the application must be attached to the citation or notice.

*Amended by Acts 2021, 87th Legislature, Ch. 576 (SB 615), effective September 1, 2021. See transitional note following Sec.1101.001.*

*Amended by Acts 2021, 87th Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec.1101.001.*

### **Sec. 1251.101. AUTHORITY OF TEMPORARY GUARDIAN.**

(a) When the temporary guardian files the oath or declaration prescribed by Section 1105.051 and the bond required under this title, the court order appointing the temporary guardian takes effect without the necessity for issuance of letters of guardianship.

(b) The clerk shall note compliance with the oath or declaration and bond requirements by the appointed temporary guardian on a certificate attached to the order.

(c) [No change.]

(d) The clerk may not issue certified copies of the order until the oath or declaration and bond requirements are satisfied.

*Amended by Acts 2021, 87th Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1105.001.*

### **Sec. 1251.153. DELIVERY OF ESTATE, FILING OF FINAL REPORT, AND[;] DISCHARGE OF TEMPORARY GUARDIAN.**

(a) [No change.]

(a-1) At the expiration of a temporary guardianship of the person, the temporary guardian shall file with the court clerk a final report that:

(1) if the ward is living, describes each reason the temporary guardianship of the person expired, including a statement of facts regarding whether the temporary guardianship expired because:

(A) the ward was found by the court to have full capacity, or sufficient capacity with supports and services, to care for himself or herself;

(B) alternatives to guardianship have been established to meet the needs of the ward; or

(C) a permanent guardian appointed by the court has qualified to serve as the ward's guardian; or

(2) if the ward is deceased, includes the date and place of death, if known, in the form and manner of the report required to be filed by a guardian of the person under Section 1163.103.

(b) On proof of delivery under Subsection (a) and approval by the court of a final report filed with the court clerk under Subsection (a-1), as applicable:

(1) the temporary guardian shall be discharged; and

(2) the sureties on the temporary guardian's bond shall be released as to future liability.

*Amended by Acts 2021, 87th Legislature, Ch. 576 (SB 615), effective September 1, 2021. Section 32(f) of SB 615 provides: "Sections 1251.153 and 1253.001, Estates Code, as amended by this Act, apply to a guardianship created before, on, or after the effective date of this Act."*

*Amended by Acts 2021, 87th Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

### **Sec. 1253.001. APPLICATION TO TRANSFER GUARDIANSHIP TO FOREIGN JURISDICTION.**

On application of the guardian or on the court's own motion, a [A guardian of the person or estate may apply to the] court that has jurisdiction over the guardianship may [to] transfer the guardianship to a court in a foreign jurisdiction to which the ward has permanently moved.

*Amended by Acts 2021, 87th Legislature, Ch. 576 (SB 615), effective September 1, 2021. See transitional note following Sec. 1251.153.*

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

**Sec. 1301.0511. NOTICE REQUIRED FOR APPLICATION FOR CREATION OF TRUST; CITATION OF APPLICANT NOT REQUIRED.**

(a) On the filing of an application for creation of a management trust and except as provided by Subsection (d), notice shall be issued and served in the manner provided by Subchapter C, Chapter 1051, for the issuance and service of notice on the filing of an application for guardianship.

(b) It is not necessary to serve a citation on a person who files an application for the creation of a management trust under this subchapter or for that person to waive the issuance and personal service of citation.

(c) If the person for whom an application for creation of a management trust is filed is a ward, the sheriff or other officer, in addition to serving the persons described by Section 1051.103, shall personally serve each guardian of the ward with citation to appear and answer the application.

(d) Notice under this section is not required if a proceeding for the appointment of a guardian is pending for the person for whom an application for creation of a management trust is filed.

*Added by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. Section 72(i) of SB 626 provides: “Section 1301.0511, Estates Code, as added by this Act, applies only to an application for creation of a management trust filed on or after the effective date of this Act. An application for creation of a management trust filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.”*

**Sec. 1301.101. REQUIRED TERMS.**

(a) Except as provided by Subsection (c), a management trust created for a ward or incapacitated person must provide that:

(1) the ward or incapacitated person is the sole beneficiary of the trust;

(2) the trustee may disburse an amount of the trust’s principal or income as the trustee determines is necessary to spend for the health, education, maintenance, or support of the person for whom the trust is created;

(3) the trust income that the trustee does not disburse under Subdivision (2) must be added to the trust principal;

(4) a trustee that is a corporate fiduciary serves without giving a bond; [~~and~~]

(5) subject to the court’s approval and Subsection (b), a trustee is entitled to receive reasonable compensation for services the trustee provides to the person for whom the trust is created as the person’s trustee; and

(6) the trust terminates:

(A) except as provided by Paragraph (B), if the person for whom the trust is created is a minor:

(i) on the earlier of:

(a) the person’s death; or

(b) the person’s 18th birthday; or

(ii) on the date provided by court order, which may not be later than the person’s 25th birthday;

(B) if the person for whom the trust is created is a minor and is also incapacitated for a reason other than being a minor:

(i) on the person’s death; or

(ii) when the person regains capacity;

or

(C) if the person for whom the trust is created is not a minor:

(i) according to the terms of the trust;

(ii) on the date the court determines that continuing the trust is no longer in the person’s best interests, subject to Section 1301.202(c); or

(iii) on the person’s death.

(a-1) – (c) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. Section 72(j) of SB 626 provides: “The changes in law made by this Act to Sections 1301.101 and 1301.203, Estates Code, apply only to an application for the creation or modification of a management trust filed on or after the effective date of this Act. An application for the creation or modification of a management trust filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.”*

**Sec. 1301.154. ANNUAL ACCOUNTING.**

(a) [No change.]



(b) The trustee of a management trust created for a ward shall provide a copy of the annual account to each ~~the~~ guardian of the ward ~~[ward's estate or person]~~.

(c) – (d) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

### Sec. 1301.203. TERMINATION OF TRUST.

(a) Except as provided by Subsection (a-1), if ~~[H]~~ the person for whom a management trust is created is a minor, the trust terminates on:

(1) the earlier of:

(A) the person's death; or

(B) the person's 18th birthday; or

(2) the date provided by court order, which may not be later than the person's 25th birthday.

(a-1) If the person for whom a management trust is created is a minor and is also incapacitated for a reason other than being a minor, the trust terminates:

(1) on the person's death; or

(2) when the person regains capacity.

(b) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1301.101.*

### Sec. 1355.002. PAYMENT OF CLAIMS TO NONRESIDENT CREDITOR.

(a) [No change.]

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

(1) a nonresident minor and has a nonresident guardian of the estate appointed by a foreign court;

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

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

(c) A debtor in this state who owes money to a nonresident creditor to whom this section applies may pay the money:

(1) to the creditor's guardian of the estate qualified in the domiciliary jurisdiction; or

(2) to the county clerk of:

(A) any county in this state in which real property owned by the creditor is located; or

(B) if the creditor is not known to own real property in this state, the county in which the debtor resides.

(d) A payment made under this section is for the nonresident creditor's account and for the nonresident creditor's use and benefit.

(e) A receipt for payment signed by the county clerk is binding on the nonresident creditor as of the date and to the extent of payment if the receipt states:

(1) the creditor's name; and

(2) the creditor's post office address, if the address is known.

(f) A county clerk who receives a payment under Subsection (c) for a nonresident creditor shall handle the money in the same manner as provided for a payment to the account of a resident creditor under Sections 1355.001, 1355.051, 1355.052, 1355.102, 1355.103, and 1355.104. Those sections apply to the handling and disposition of money or any increase, dividend, or income paid to the clerk for the use, benefit, and account of the nonresident creditor to whom this section applies.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 1023.006.*

### Sec. 1355.105. WITHDRAWAL OF MONEY BY CREDITOR OR CREDITOR'S HEIR, ~~[OR]~~ REPRESENTATIVE, OR GUARDIAN.

(a) On presentation to the court clerk of an order of a county or probate court of the county in which the money is held, money that is not withdrawn by an authorized person as provided by this chapter may be withdrawn by:

(1) the creditor, after termination of the creditor's disability;

(2) a subsequent personal representative of the creditor; ~~[or]~~

(3) the creditor's heirs; or

(4) a nonresident guardian of the estate appointed by a foreign court for a creditor who is:

(A) a nonresident minor; or

(B) a nonresident person who is adjudged to be incapacitated.

(b) Except as provided by Subsection (b-1), a ~~[A]~~ withdrawal under Subsection (a) may be made at any time and without a special bond for that purpose.

(b-1) A court may require a nonresident guardian of the estate of a creditor who is a nonresident minor or nonresident incapacitated person as described by Subsection (a)(4) to provide proof that the nonresident guardian of the estate gave an adequate bond in the foreign jurisdiction if the court determines that it is in the nonresident minor's or nonresident incapacitated person's best interest.

(c) The order presented under Subsection (a) must direct the court clerk to deliver the money to:

- (1) the creditor;
- (2) [;] the creditor's personal representative;
- (3) [~~;~~] the creditor's heirs named in the order;

or

(4) if the creditor is a nonresident minor or nonresident person who is adjudged to be incapacitated, the creditor's nonresident guardian of the estate.

(d) Before the court may issue an order under this section, the person's identity and credentials must be proved to the court's satisfaction. For purposes of this subsection, a nonresident guardian of the estate described by Subsection (c)(4) must present to the court exemplified copies of the order of a foreign court appointing the guardian and current letters of guardianship issued in the foreign jurisdiction.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. Section 72(k) of SB 626 provides: "The changes in law made by this Act to Section 1355.105, Estates Code, apply only to an application for an order for the delivery of money that is filed on or after the effective date of this Act. An application for an order for the delivery of money that is filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose."*

## 2021 Amendments to the Texas Trust Code

[The following excerpt reflects amendments made by HB 654.]

**SEC. 112.036. RULE AGAINST PERPETUITIES.**

(a) The rule against perpetuities applies to an interest in a trust [~~trusts~~] other than a charitable trust [~~trusts~~].

(b) For purposes of this section, the effective date of a trust is the date the trust becomes irrevocable.

(c) An interest in a trust must vest, if at all:

(1) not later than 300 years after the effective date of the trust, if the effective date of the trust is on or after September 1, 2021; or

(2) except as provided by Subsection (d), [~~Accordingly, an interest is not good unless it must vest, if at all,~~] not later than 21 years after some life in being at the time of the creation of the interest, plus a period of gestation, if the effective date of the trust is before September 1, 2021.

(d) An interest in a trust that has an effective date before September 1, 2021, may vest as described by Subsection (c)(1) if the trust instrument provides that an interest in the trust vests under the provisions of this section applicable to trusts on the date that the interest vests.

(e) Any interest in a trust may [~~however,~~] be reformed or construed to the extent and as provided by Section 5.043.

(f) Under this section, a settlor of a trust may not direct that a real property asset be retained or refuse that a real property asset may be sold for a period longer than 100 years.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 792 (HB 654), effective September 1, 2021.*



## 2021 Selected Amendments to the Texas Property Code (Excluding Trust Code)

[The following excerpts reflect amendments made by HB 1514, SB 286]

**Sec. 72.001. APPLICATION OF CHAPTER.**

(a) [No change.]

(a-1) Tangible or intangible personal property is not subject to this chapter if it is a worthless or non-freely transferable security.

(b) – (f) [No change.]

*Added by Acts 2021, 87<sup>th</sup> Legislature, Ch. 52 (HB 1514), effective May 18, 2021. Section 21 of HB 1514 provides: “This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.” HB 1514 received the required two-thirds majorities and was signed by the Governor May 18, 2021.*

*Section 20 of HB 1514 provides: “To the extent of any conflict, this Act prevails over another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.”*

**Sec. 74.001. APPLICABILITY.**

(a) Except as provided by this section [~~Subsection (b)~~], this chapter applies to:

(1) property that is presumed abandoned under Chapter 72, Chapter 73, or Chapter 75;

(2) property that is presumed abandoned under Chapter 154, Finance Code;

(3) unclaimed proceeds under Chapter 1109, Insurance Code; or

(4) any other law requiring a person to report and deliver property to the comptroller under this chapter.

(b) – (c) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 52 (HB 1514), effective May 18, 2021. See transitional note following Sec. 72.001.*

**Sec. 74.101. PROPERTY REPORT.**

(a) Except as provided by this section [~~Subsection (b)~~], this chapter applies to:

(1) property that is presumed abandoned under Chapter 72, Chapter 73, or Chapter 75;

(2) property that is presumed abandoned under Chapter 154, Finance Code;

(3) unclaimed proceeds under Chapter 1109, Insurance Code; or

(4) any other law requiring a person to report and deliver property to the comptroller under this chapter.

(b) – (e) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 52 (HB 1514), effective May 18, 2021. See transitional note following Sec. 72.001.*

**Sec. 74.101. NOTICE BY PROPERTY HOLDER REQUIRED.**

(a) Except as provided by Subsection (b), a holder who on March 1 holds property to which this chapter applies that is valued at more than \$250 [~~that is presumed abandoned under Chapter 72, 73, or 75 of this code or Chapter 154, Finance Code,~~] shall, not later than the 60th day before the date the property is delivered to the comptroller, provide to the owner by [~~on or before the following May 1,~~] mail to the last known address of the [~~known~~] owner or by e-mail written notice stating that:

(1) the holder is holding the property; and

(2) the holder may be required to deliver the property to the comptroller on or before July 1 if the property is not claimed.

(b) The notice required under Subsection (a) does not apply to a holder who:

(1) has already provided such notice to the owner of the property or a person entitled to the property under existing federal law, rules, and regulations or state law within the time specified under Subsection (a); or

(2) does not have a record of a physical or e-mail [~~an~~] address for the property owner or any other person entitled to the property.

(b-1) If an owner has designated a representative for notice under Section 72.1021 or 73.103, the holder shall mail or e-mail the written notice required under Subsection (a) to the representative in addition to providing written [~~mailing the~~] notice to the owner.

(c) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 52 (HB 1514), effective May 18, 2021. See transitional note following Sec. 72.001.*

**Sec. 74.301. DELIVERY OF PROPERTY TO COMPTROLLER**

(a) Except as provided by Subsection (c), each holder who on March 1 holds property to which this chapter applies [~~that is presumed abandoned under Chapter 72, 73, or 75~~] shall deliver the property to the comptroller on or before the following July 1 accompanied by the report required to be filed under Section 74.101.

(b) – (c) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 52 (HB 1514), effective May 18, 2021. See transitional note following Sec. 72.001.*

**Sec. 74.401. SALE OF PROPERTY.**

(a) – (c) [No change.]

(d) If after investigation the comptroller determines that property delivered under this chapter is not marketable or [~~from a safe deposit box or other repository~~] has insubstantial commercial value, the comptroller may destroy or otherwise dispose of the property at any time.

(e) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 52 (HB 1514), effective May 18, 2021. See transitional note following Sec. 72.001.*

**Sec. 74.405. DISPOSITION OF SECURITIES.**

(a) The comptroller may sell or otherwise liquidate a security delivered to the comptroller under this chapter.

(b) The comptroller may not sell a security listed on an established stock exchange for less than the price prevailing on the exchange at the time of sale. The comptroller may sell a security not listed on an established exchange by any commercially reasonable method.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 52 (HB 1514), effective May 18, 2021. See transitional note following Sec. 72.001.*

**Sec. 74.501. CLAIM FILED WITH COMPTROLLER.**

(a) – (b) [No change.]

(c) All claims to which this subchapter [~~section~~] applies must:

(1) identify the specific property in the possession of the comptroller that is being claimed;

(2) include all necessary documentation the comptroller may require; and

(3) except as provided by Section 74.503, be filed in accordance with procedures, contain the

information, and be on forms prescribed by the comptroller.

(d) On receipt of a claim form and all necessary documentation the comptroller may require, or [~~and~~] as may be appropriate under the circumstances, the comptroller may approve the claim of:

(1) the reported owner of the property;

(2) if the reported owner died testate:

(A) the appropriate legal beneficiaries of the owner as provided by the last will and testament of the owner that has been accepted into probate or filed as a muniment of title; [ø]

(B) the executor of the owner's last will and testament who holds current letters testamentary; or

(C) the appropriate legal beneficiaries of the owner as provided by a valid last will and testament of the owner that has not been accepted into probate or filed as a muniment of title, if:

(i) the amount of the property being claimed is less than \$10,000; and

(ii) the beneficiaries named in the will are the same persons who would inherit the property if the owner had died intestate;

(3) if the reported owner died intestate:

(A) the legal heirs of the owner as provided by Sections 201.001, [~~and~~] 201.002, and 201.003, Estates Code; [ø]

(B) the court-appointed independent administrator of the owner's estate, if the administrator was appointed before the fourth anniversary of the date of the death of the owner; or

(C) the court-appointed dependent administrator of the owner's estate;

(4) the legal heirs of the reported owner as established by a determination [~~an affidavit~~] of heirship order signed by a judge of the county probate court or by a county judge;

(5) if the reported owner is a minor child or an adult who has been adjudged incompetent by a court of law, the parent or legal guardian of the child or adult;

(6) if the reported owner is a corporation:

(A) the president or chair of the board of directors of the corporation, on behalf of the corporation; or

(B) any person who has legal authority to act on behalf of the corporation;

(7) if the reported owner is a corporation that has been dissolved or liquidated:

(A) the sole surviving shareholder of the corporation, if there is only one surviving shareholder;

(B) the surviving shareholders of the corporation in proportion to their ownership of the corporation, if there is more than one surviving shareholder;

(C) the corporation's bankruptcy trustee, bankruptcy estate representative, or other person authorized pursuant to Title 11, United States Code, or an order of a bankruptcy court to act on behalf of or for the benefit of the corporation's bankruptcy estate, or any assignee of any such person; or

(D) the court-ordered receiver for the corporation; or

(8) any other person that is entitled to receive the unclaimed property under other law or comptroller policy.

(e) [No change.]

(f) Notwithstanding Subsection (e), the [The] comptroller may approve the [a] claim of [fœr]:

(1) the attorney general or other Title IV-D agency, as defined by Section 101.033, Family Code, for child support arrearages owed by the reported owner of the property that are [and] reflected in a child support lien notice that complies with Section 157.313, Family Code; or

(2) a person holding a durable power of attorney of a person who is medically incapacitated. [A claim under this subsection may be submitted by the lienholder or the attorney general on behalf of the lienholder.]

(e) Except as provided by Subsection (d)(7) or (f) or Section 551.051, Estates Code, the comptroller may not pay to the following persons a claim to which this section applies:

(1) a creditor, a judgment creditor, a lienholder, or an assignee of the reported owner or of the owner's heirs;

(2) a person holding a power of attorney from the reported owner or the owner's heirs; or

(3) a person attempting to make a claim on behalf of a corporation that was previously forfeited, dissolved, or terminated, if the comptroller finds that:

(A) the corporation was revived for the purpose of making a claim under this section; and

(B) the person submitting the claim was not an authorized representative of the corporation at the time of the corporation's forfeiture, dissolution, or termination.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 52 (HB 1514), effective May 18, 2021. See transitional note following Sec. 72.001.*

### **Sec. 74.503. WAIVER OF CLAIM REQUIREMENT.**

The comptroller may waive the requirement of filing a claim and pay or deliver property directly to a person who does not file a claim if:

(1) the person receiving the property is the reported owner of the property;

(2) the comptroller reasonably believes the person is entitled to receive the property or payment; and

(3) the property has a value of less than \$5,000.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 52 (HB 1514), effective May 18, 2021. See transitional note following Sec. 72.001.*

### **Sec. 74.506. APPEAL.**

(a) A person who has filed a claim that complies with Section 74.501(c) may appeal [aggrieved by] the decision of the comptroller on the [a] claim [filed under this subchapter may appeal the decision] before the 61st day after the day on which it was rendered.

(b) If a claim that complies with Section 74.501(c) has not been decided before the 91st day after the day on which it was filed, the claimant may file an appeal if, after the claimant provides notice by certified mail to the comptroller of the intent to file an appeal, the comptroller does not reach a decision on the claim on or before the 60th day after the date the notice is delivered to the comptroller. An appeal under this section must be made within one year of the date the claim was filed [the 60-day period beginning on the 91st day after the day of filing].

(c) – (d) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 52 (HB 1514), effective May 18, 2021. See transitional note following Sec. 72.001.*

### **Sec. 74.507. ASSISTANCE OF CLAIMANT; FEE FOR RECOVERY.**

(a) A person who informs a potential claimant that the claimant may be entitled to claim property that is reportable to the comptroller under this chapter, that has been reported to the comptroller, or that is in the possession of the comptroller may not contract for or receive from the claimant for services an amount that exceeds 10 percent of the value of the property

recovered, plus reasonable attorney's fees necessary to pursue the claim. If the property involved is mineral proceeds, the amount for services may not include a portion of the underlying minerals or any production payment, overriding royalty, or similar payment.

(b) [No change.]

(c) An agreement to assist a claimant in the recovery of property that is reportable to the comptroller, that has been reported to the comptroller, or that is in the possession of the comptroller under this chapter is enforceable only if the agreement:

(1) clearly states the nature of the property and the services to be provided;

(2) is signed by or on behalf of the claimant;  
and

(3) states the amount or value of the property reasonably expected to be recovered, computed before and after a fee or other compensation has been deducted.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 52 (HB 1514), effective May 18, 2021. See transitional note following Sec. 72.001.*

Sec. 74.601. UNCLAIMED MONEY.

(a) – (d) [No change.]

(e) The comptroller ~~may [on receipt or from time to time may sell securities, including stocks, bonds, and mutual funds, received under this chapter or any other statute requiring the delivery of unclaimed property to the comptroller and]~~ use the proceeds from the sale of securities delivered under this chapter to buy, exchange, invest, or reinvest in marketable securities. When making or selling the investments, the comptroller shall exercise the judgment and care of a prudent person.

(f) – (g) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 52 (HB 1514), effective May 18, 2021. See transitional note following Sec. 72.001.*

#### **Sec. 74.707. WAIVER OR ABATEMENT OF PENALTY OR INTEREST.**

(a) The comptroller may waive penalty or interest, in whole or in part, imposed on delinquent property if the comptroller determines that the holder has made a good faith effort to comply with Chapters 72-75, or for other good cause.

(b) – (c) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 52 (HB 1514), effective May 18, 2021. See transitional note following Sec. 72.001.*

#### **Sec. 240.009. POWER TO DISCLAIM; GENERAL REQUIREMENTS; WHEN IRREVOCABLE.**

(a) – (d). [No change.]

(e) A disclaimer of an interest in property made by an individual must contain a statement under penalty of perjury regarding whether the disclaimant is a child support obligor whose disclaimer is barred under Section 240.151(g). An individual's failure to include the statement does not invalidate a disclaimer if the disclaimer is not barred under Section 240.151(g).

*Added by Acts 2021, 87<sup>th</sup> Legislature, Ch. 552 (SB 286), effective September 1, 2021. Section 19 of SB 286 provides: "Section 240.009, Property Code, as amended by this Act, applies only to a disclaimer made on or after the effective date of this Act. A disclaimer made before the effective date of this Act is governed by the law in effect at the time the disclaimer was made, and the former law is continued in effect for that purpose."*



## Other Selected 2021 Amendments

[The following excerpts reflect amendments made by HB 79, HB 1514, HB 1578, HB 3774, SB 615, SB 626, SB 1129]

## CIVIL PRACTICE &amp; REMEDIES CODE

**Sec. 30.014. PLEADINGS MUST CONTAIN PARTIAL IDENTIFICATION INFORMATION.**

(a) In a civil action, including a probate or guardianship proceeding, filed in a district court, county court, [or] statutory county court, or statutory probate court, each party or the party's attorney shall include in its initial pleading:

(1) the last three numbers of the party's driver's license number, if the party has been issued a driver's license; and

(2) the last three numbers of the party's social security number, if the party has been issued a social security number.

(b) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 576 (SB 615), effective September 1, 2021.*

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. Sec. 72(a) of SB 626 provides: "Except as otherwise provided by this Act, the changes in law made by this Act apply to: (1) a guardianship created before, on, or after the effective date of this Act; and (2) an application for a guardianship pending on, or filed on or after, the effective date of this Act."*

**Sec. 38.001. RECOVERY OF ATTORNEY'S FEES.**

(a) In this section, "organization" has the meaning assigned by Section 1.002, Business Organizations Code.

(b) A person may recover reasonable attorney's fees from an individual or organization other than a quasi-governmental entity authorized to perform a function by state law, a religious organization, a charitable organization, or a charitable trust [corporation], in addition to the amount of a valid claim and costs, if the claim is for:

- (1) rendered services;
- (2) performed labor;
- (3) furnished material;
- (4) freight or express overcharges;
- (5) lost or damaged freight or express;
- (6) killed or injured stock;

(7) a sworn account; or

(8) an oral or written contract.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 665 (HB 1578), effective September 1, 2021. Section 2 of HB 1578 provides: "The change in law made by this Act applies only to an award of attorney's fees in an action commenced on or after the effective date of this Act. An award of attorney's fees in an action commenced before the effective date of this Act is governed by the law applicable to the award immediately before the effective date of this Act, and that law is continued in effect for that purpose."*

## GOVERNMENT CODE

**Sec. 25.0006. BOND; REMOVAL.**

(a) Notwithstanding any other law except Subsection (a-4), Subsections (a-1), (a-2), [~~and~~] (a-3), and (a-5) control over a specific provision for a particular court or county that attempts to create a requirement for a bond or insurance that conflicts with those subsections.

(a-1) – (a-4) [No change.]

(a-5) A bond executed under Subsection (a-1) by the judge elected or appointed to a statutory county court or an insurance policy obtained under Subsection (a-3) shall provide the same coverage to a visiting judge assigned to the court or associate judge appointed to serve the court as the bond or insurance policy provides to the judge elected or appointed to the court.

(b) [No change.]

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 576 (SB 615), effective September 1, 2021. Section 32(g) of SB 615 provides: "The changes in law made by this Act to Sections 25.0006 and 25.00231, Government Code, apply only to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2022. An insurance policy delivered, issued for delivery, or renewed before January 1, 2022, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose."*

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. Section 72(l) of SB 626 provides: "The changes in law made by this Act to Sections 25.0006 and 25.00231, Government Code, apply only to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2022. An insurance policy delivered, issued for delivery, or*

*renewed before January 1, 2022, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.”*

**Sec. 25.00231. BOND; INSURANCE.**

(a) – (e) [No change.]

(f) Notwithstanding Subsection (e), a bond executed under Subsection (b) by the judge elected or appointed to a statutory probate court or an insurance policy obtained under Subsection (c) shall provide the same coverage to a visiting judge assigned to the court or to an associate judge appointed by the court as the bond or insurance policy provides to the judge elected or appointed to the court.

*Added by Acts 2021, 87th Legislature, Ch. 576 (SB 615), effective September 1, 2021. See transitional note following Sec. 25.0006.*

*Added by Acts 2021, 87th Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Sec. 25.0006.*

**Sec. 25.0027. JURIES; PRACTICE AND PROCEDURE.**

The drawing of jury panels, selection of jurors, and practice in the statutory probate courts must conform to that prescribed by law for county courts, except that practice, procedure, rules of evidence, issuance of process and writs, juries, including the number of jurors provided the parties to a proceeding may agree to try a particular case with fewer than 12 jurors, and all other matters pertaining to the conduct of trials and hearings in the statutory probate courts involving those matters of concurrent jurisdiction with district courts are governed by the laws and rules pertaining to district courts.

*Amended by Acts 2021, 87th Legislature, Ch. 576 (SB 615), effective September 1, 2021.*

*Amended by Acts 2021, 87th Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Civ. Prac. & Rem. Code Sec. 30.014.*

**Sec. 51.3071. TRANSFER OF CASES.**

(a) If a case is transferred from a district court to a county court, the clerk of the district court shall [may] send to the county clerk using the electronic filing system established under Section 72.031 [in electronic or paper form]:

(1) a transfer certificate and index of transferred documents [certified transcript of the proceedings held in the district court];

(2) a copy of the original papers filed in the transferring [district] court; [and]

(3) a copy of the order of transfer signed by the transferring court;

(4) a copy of each final order;

(5) a copy of the transfer certificate and index of transferred documents from each previous transfer; and

(6) a bill of any [the] costs that have accrued in the transferring [district] court.

(b) The clerk of the transferring court shall use the standardized transfer certificate and index of transferred documents form created by the Office of Court Administration of the Texas Judicial System under Section 72.037 when transferring a case under this section.

(c) The clerk of the transferee court shall accept documents transferred under Subsection (a) and docket the case.

(d) The clerk of the transferee court shall physically or electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance under Subsection (c), but may not physically or electronically mark or stamp any other document transferred under Subsection (a).

(e) Sections 80.001 and 80.002 do not apply to the transfer of documents under this section.

*Amended by Acts 2021, 87th Legislature, Ch. 934 (HB 3774), effective September 1, 2021.*

**Sec. 51.403. TRANSFER OF CASES.**

(a) If a case is transferred from a county court to a district court, the clerk of the county court shall send to the district clerk using the electronic filing system established under Section 72.031 [in electronic or paper form]:

(1) a transfer certificate and index of transferred documents [certified transcript of the proceedings held in the county court];

(2) a copy of the original papers filed in the transferring [county] court; [and]

(3) a copy of the order of transfer signed by the transferring court;

(4) a copy of each final order;

(5) a copy of the transfer certificate and index of transferred documents from each previous transfer; and

(6) a bill of any [the] costs that have accrued in the transferring [county] court.

(a-1) The clerk of the transferring court shall use the standardized transfer certificate and index of transferred documents form created by the Office of Court Administration of the Texas Judicial System under Section 72.037 when transferring a case under this section.

(a-2) The clerk of the transferee court shall accept documents transferred under Subsection (a) and docket the case.

(a-3) The clerk of the transferee court shall physically or electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance under Subsection (a-2), but may not physically or electronically mark or stamp any other document transferred under Subsection (a).

(b) If civil or criminal jurisdiction of a county court is transferred to a district court, the clerk of the county court shall send using the electronic filing system established under Section 72.031 a certified copy of the judgments rendered in the county court that remain unsatisfied[~~, in electronic or paper form,~~] to the district clerks of the appropriate counties.

(c) Sections 80.001 and 80.002 do not apply to the transfer of documents under this section.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 934 (HB 3774), effective September 1, 2021.*

#### **Sec. 72.037. TRANSFER CERTIFICATE AND INDEX OF TRANSFERRED DOCUMENTS FORM.**

(a) The office shall develop and make available a standardized transfer certificate and an index of transferred documents form to be used for the transfer of cases and proceedings under Section 155.207, Family Code, and Sections 51.3071 and 51.403 of this code.

(b) In developing a form under this section, the office shall consult with representatives of county and district clerks.

*Added by Acts 2021, 87<sup>th</sup> Legislature, Ch. 934 (HB 3774), effective September 1, 2021.*

#### **Sec. 74.141. DEFENSE OF JUDGES.**

The attorney general shall defend a state district judge, a presiding judge of an administrative region, the presiding judge of the statutory probate courts, a visiting judge assigned to hear a guardianship or probate matter by the presiding judge of the statutory probate courts, or an active, retired, or former judge assigned under this

chapter in any action or suit in any court in which the judge is a defendant because of the judge's [his] office or capacity as judge if the judge requests the attorney general's assistance in the defense of the suit.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 576 (SB 615), effective September 1, 2021. Section 32(h) of SB 615 provides: "Section 74.141, Government Code, as amended by this Act, applies to a cause of action filed on or after the effective date of this Act. A cause of action filed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose."*

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. Section 72(m) of SB 626 provides: "Section 74.141, Government Code, as amended by this Act, applies to a cause of action filed on or after the effective date of this Act. A cause of action filed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose."*

#### **Sec. 81.114. ATTORNEY INSTRUCTION RELATED TO GUARDIANSHIP ISSUES.**

(a) The state bar shall provide a course of instruction for attorneys who represent any person's interests [parties] in guardianship cases or who serve as court-appointed guardians.

(b) – (d) [No change.]

(e) The course of instruction described by this section must be low-cost and available to persons throughout this state, including on the Internet provided through the state bar.

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 576 (SB 615), effective September 1, 2021.*

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Civ. Prac. & Rem. Code Sec. 30.014.*

#### **Sec. 155.205. DUTY TO OBTAIN CRIMINAL HISTORY RECORD INFORMATION.**

(a) [No change.]

(b) The commission shall obtain:

(1) fingerprint-based criminal history record information of a proposed guardian [an applicant] if:

<sup>1</sup> SB 615 did not change the gender-specific pronoun "his" found in Sec. 74.141. However, SB 626 replaced "his" with "the judge's" in its amendment to Sec. 74.141.

(A) the liquid assets of the estate of a ward exceed \$50,000; or

(B) the proposed guardian is not a resident of this state; or

(2) name-based criminal history record information of a proposed guardian, including any criminal history record information under the current name and all former names of the proposed guardian, [an applicant] if:

(A) the liquid assets of the estate of a ward are \$50,000 or less; and

(B) the proposed guardian is a resident of this state.

*Amended by Acts 2021, 87th Legislature, Ch. 576 (SB 615), effective September 1, 2021. Section 32(e) of SB 615 provides: “Sections 1054.201 and 1101.153, Estates Code, as amended by this Act, and Section 155.205, Government Code, as amended by this Act, apply only to a guardianship proceeding commenced on or after the effective date of this Act. A guardianship proceeding commenced before the effective date of this Act is governed by the law applicable to the proceeding immediately before the effective date of this Act, and the former law is continued in effect for that purpose.”*

*Amended by Acts 2021, 87<sup>th</sup> Legislature, Ch. 521 (SB 626), effective September 1, 2021. See transitional note following Civ. Prac. & Rem. Code Sec. 30.014.*

## **CHAPTER 155. DUTIES RESPECTING GUARDIANSHIP**

### **SUBCHAPTER G. GUARDIANSHIP MEDIATION TRAINING**

*Added by Acts 2021, 87th Legislature, Ch. 382 (SB 1129), effective September 1, 2021. Section 6 of SB 1129 provides: “The changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act.”*

#### **Sec. 155.301. TRAINING.**

(a) The office by rule shall establish a training course with at least 24 hours of training for persons facilitating mediations under Title 3, Estates Code, that may be provided by a mediation training provider approved by the office. A mediation training provider shall adhere to the established curriculum in providing the training course.

(b) This section does not require a mediator facilitating a mediation under Title 3, Estates Code, to attend or be certified under a training course established under Subsection (a).

*Added by Acts 2021, 87th Legislature, Ch. 382 (SB 1129), effective September 1, 2021. Section 6 of SB 1129 provides: “The changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act.”*

## **CHAPTER 54A. ASSOCIATE JUDGES**

### **SUBCHAPTER D. ASSOCIATE JUDGE FOR GUARDIANSHIP PROCEEDINGS AND PROTECTIVE SERVICES PROCEEDINGS IN CERTAIN COURTS**

*Added by Acts 2021, 87th Legislature, Ch. 627 (HB 79), effective September 1, 2021.*

#### **Sec. 54A.301. DEFINITIONS.**

In this subchapter:

(1) “Guardianship proceeding” has the meaning assigned by Section 1002.015, Estates Code.

(2) “Office of court administration” means the Office of Court Administration of the Texas Judicial System.

(3) “Protective services proceeding” means a proceeding commenced under Chapter 48, Human Resources Code.

(4) “Ward” has the meaning assigned by Section 1002.030, Estates Code.

*Added by Acts 2021, 87th Legislature, Ch. 627 (HB 79), effective September 1, 2021.*

#### **Sec. 54A.302. APPLICABILITY.**

This subchapter applies only with respect to:

(1) a county court with jurisdiction over guardianship proceedings or protective services proceedings; and

(2) a statutory county court with jurisdiction over:

(A) guardianship proceedings, other than a court created by statute and designated as a statutory probate court under Chapter 25; or

(B) protective services proceedings.

*Added by Acts 2021, 87th Legislature, Ch. 627 (HB 79), effective September 1, 2021.*

#### **Sec. 54A.303. APPLICABILITY OF OTHER LAW; CONSTRUCTION OF SUBCHAPTER.**

(a) Subchapter C applies to an associate judge appointed under this subchapter except to the extent of a conflict with this subchapter.

(b) Nothing in this subchapter limits the authority of a court to which this subchapter applies to issue an

order under Title 3, Estates Code, or Chapter 48, Human Resources Code.

*Added by Acts 2021, 87th Legislature, Ch. 627 (HB 79), effective September 1, 2021.*

**Sec. 54A.304. APPOINTMENT.**

(a) The presiding judge of each administrative judicial region, after conferring with the judges of courts to which this subchapter applies in the region, shall determine whether those courts require the appointment of a full-time or part-time associate judge to assist the courts with conducting:

(1) guardianship proceedings, including with conducting annual reviews of guardianships; or

(2) protective services proceedings.

(b) If the presiding judge of an administrative judicial region determines the courts described by Subsection (a) require the appointment of an associate judge, the presiding judge shall appoint an associate judge from a list of applicants who submit an application to the office of court administration and meet the qualifications prescribed by Section 54A.305. Before making the appointment, the presiding judge must provide the list to each judge of a court from which guardianship proceedings or protective services proceedings will be referred to the associate judge. Each of those judges and the presiding judge of the statutory probate courts may recommend to the presiding judge of the administrative judicial region one or more of the listed applicants for appointment.

(c) Before reappointing an associate judge appointed under Subsection (b), a presiding judge of an administrative judicial region must notify each judge of a court from which guardianship proceedings or protective services proceedings will be referred to the associate judge of the presiding judge's intent to reappoint the associate judge for another term. Each of those judges and the presiding judge of the statutory probate courts may submit to the presiding judge of the administrative judicial region a recommendation on whether the associate judge should be reappointed.

(d) An associate judge appointed under this subchapter serves the courts to which this subchapter applies in the administrative judicial region that are specified by the appointing presiding judge. Two or more presiding judges of administrative judicial regions may jointly appoint one or more associate judges under this subchapter to serve specified courts to which this subchapter applies in the presiding judges' regions.

*Added by Acts 2021, 87th Legislature, Ch. 627 (HB 79), effective September 1, 2021.*

**Sec. 54A.305. QUALIFICATIONS.**

(a) To be eligible for appointment as an associate judge under this subchapter, a person must:

(1) be a citizen of the United States;

(2) be a resident of this state for the two years preceding the date of appointment; and

(3) be:

(A) eligible for assignment under Section 74.054 because the person is named on the list of retired and former judges maintained by the presiding judge of the administrative judicial region under Section 74.055;

(B) eligible for assignment under Section 25.0022 by the presiding judge of the statutory probate courts; or

(C) licensed to practice law in this state and have at least four years of experience in guardianship proceedings or protective services proceedings before the date of appointment as a practicing attorney in this state or a judge of a court in this state.

(b) An associate judge appointed under this subchapter to serve in one administrative judicial region shall, during the term of appointment, reside in that region or in a county adjacent to that region. An associate judge appointed to serve in two or more administrative judicial regions may reside anywhere in the regions.

*Added by Acts 2021, 87th Legislature, Ch. 627 (HB 79), effective September 1, 2021.*

**Sec. 54A.306. TERM OF APPOINTMENT; TERMINATION.**

(a) An associate judge appointed under this subchapter serves for a term of four years from the date the associate judge is appointed and qualifies for office.

(b) The appointment of an associate judge for a term does not affect the at-will employment status of the associate judge. An appointing presiding judge of an administrative judicial region or the successor presiding judge of the region may terminate the associate judge's appointment at any time.

*Added by Acts 2021, 87th Legislature, Ch. 627 (HB 79), effective September 1, 2021.*

**Sec. 54A.307. COMPENSATION OF ASSOCIATE JUDGE.**

(a) An associate judge appointed under this subchapter is entitled to a salary in an amount equal to 90 percent of the salary paid to a district judge as set by the General Appropriations Act.

(b) The associate judge's salary shall be paid from:

(1) money available from the federal government;

(2) county money available for payment of officers' salaries, subject to the approval of the commissioners courts of the counties in which the associate judge serves; or

(3) a combination of money specified by Subdivisions (1) and (2).

*Added by Acts 2021, 87th Legislature, Ch. 627 (HB 79), effective September 1, 2021.*

**Sec. 54A.308. DESIGNATION AND RESPONSIBILITIES OF HOST COUNTY.**

(a) Subject to the approval of the commissioners court of the proposed host county:

(1) the appointing presiding judge of the administrative judicial region shall determine the host county of an associate judge appointed to serve in one administrative judicial region; and

(2) the appointing presiding judges of the administrative judicial regions shall by majority vote determine the host county of an associate judge appointed to serve in more than one administrative judicial region.

(b) The host county shall provide an adequate courtroom and quarters, including furniture, necessary utilities, and telephone equipment and service, for the associate judge and other personnel assisting the associate judge.

(c) Except as provided by Section 54A.305(b), an associate judge is not required to reside in the host county.

*Added by Acts 2021, 87th Legislature, Ch. 627 (HB 79), effective September 1, 2021.*

**Sec. 54A.309. METHODS OF REFERRAL.**

(a) Guardianship proceedings or protective services proceedings shall be referred to an associate judge appointed under this subchapter by a general order issued by the judge of each court the associate judge is appointed to serve.

(b) A general order issued under this section may be amended or withdrawn at any time by the judge of the court issuing the order.

(c) In lieu of a general order, the judge of a court the associate judge is appointed to serve by order may refer a specific guardianship proceeding or a specific protective services proceeding to the associate judge.

*Added by Acts 2021, 87th Legislature, Ch. 627 (HB 79), effective September 1, 2021.*

**Sec. 54A.310. GENERAL POWERS OF ASSOCIATE JUDGE.**

(a) On the motion of a party or the associate judge, an associate judge may return a complex guardianship proceeding to the referring court for final disposition after recommending temporary orders for the protection of a ward.

(b) An associate judge may:

(1) render and sign any pretrial order; and

(2) recommend to the referring court any order after a trial on the merits.

*Added by Acts 2021, 87th Legislature, Ch. 627 (HB 79), effective September 1, 2021.*

**Sec. 54A.311. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT.**

If a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, the proposed order or judgment of the associate judge for the guardianship proceeding or protective services proceeding becomes the order or judgment of the referring court by operation of law without ratification by the referring court.

*Added by Acts 2021, 87th Legislature, Ch. 627 (HB 79), effective September 1, 2021.*

**Sec. 54A.312. PERSONNEL.**

(a) The appointing presiding judge of an administrative judicial region or appointing presiding judges of the administrative judicial regions, by majority vote, as applicable, may appoint the personnel needed to assist an associate judge in implementing and administering this subchapter.

(b) The salaries of the personnel shall be paid from:

(1) money available from the federal government;

(2) county money available for payment of officers' salaries, subject to the approval of the commissioners courts of the counties in which the associate judge serves; or

(3) a combination of money specified by Subdivisions (1) and (2).

*Added by Acts 2021, 87th Legislature, Ch. 627 (HB 79), effective September 1, 2021.*

**Sec. 54A.313. SUPERVISION, TRAINING, AND EVALUATION OF ASSOCIATE JUDGES.**

(a) The office of court administration shall assist the presiding judges of the administrative judicial regions in:

(1) monitoring associate judges' compliance with job performance standards, uniform practices adopted by the presiding judges, and federal and state laws and policies;

(2) addressing the training needs and resource requirements of associate judges;

(3) conducting annual performance evaluations for associate judges and other personnel appointed under this subchapter based on written personnel performance standards adopted by the presiding judges and performance information solicited from the referring courts and other relevant persons; and

(4) receiving, investigating, and resolving complaints about an individual associate judge or the associate judge program under this subchapter based on a uniform process adopted by the presiding judges.

(b) The office of court administration shall develop procedures and a written evaluation form to be used by the presiding judges in conducting the annual performance evaluations under Subsection (a)(3).

(c) The office of court administration shall develop caseload standards for associate judges to ensure adequate staffing.

(d) Each judge of a court that refers guardianship proceedings or protective services proceedings to an associate judge under this subchapter may submit to the appropriate presiding judges or the office of court administration information on the associate judge's performance during the preceding year based on a uniform process adopted by the presiding judges.

*Added by Acts 2021, 87th Legislature, Ch. 627 (HB 79), effective September 1, 2021.*

#### **Sec. 54A.314. FUNDING AND PERSONNEL.**

(a) The office of court administration may:

(1) contract for available county and federal money from any available source; and

(2) employ personnel, including investigators, auditors, court coordinators, and other judicial staff, necessary to implement and administer this subchapter.

(b) The presiding judges of the administrative judicial regions and counties may contract for federal money available from any source to reimburse the costs and salaries of the associate judges and personnel appointed under this subchapter and may also use public or private grants.

(c) The presiding judges of the administrative judicial regions and the office of court administration in cooperation with other agencies shall take action necessary to maximize the amount of federal money

available to fund the use of associate judges under this subchapter.

*Added by Acts 2021, 87th Legislature, Ch. 627 (HB 79), effective September 1, 2021.*

#### **Sec. 54A.315. ASSIGNMENT OF JUDGES AND APPOINTMENT OF VISITING ASSOCIATE JUDGES.**

(a) This subchapter does not limit the authority of a presiding judge of an administrative judicial region to assign a judge eligible for assignment under Chapter 74 to assist in processing guardianship proceedings or protective services proceedings in a reasonable time.

(b) If an associate judge appointed under this subchapter is temporarily unable to perform the associate judge's official duties because of absence resulting from family circumstances, illness, injury, disability, or military service, or if a vacancy occurs in the position of associate judge, the presiding judge of the administrative judicial region, or the presiding judges of the administrative judicial regions by majority vote, as applicable, in which the associate judge serves or the vacancy occurs may appoint a visiting associate judge to perform the duties of the associate judge during the period the associate judge is unable to perform the associate judge's duties or until another associate judge is appointed to fill the vacancy.

(c) A person is not eligible for appointment under this section unless the person has served for at least two years before the date of appointment as an associate judge under this subchapter, a district judge, a statutory county court judge, or a statutory probate judge.

(d) A visiting associate judge appointed under this section:

(1) is subject to each provision of this subchapter that applies to an associate judge appointed under this subchapter;

(2) is entitled to compensation in the amount determined by a majority vote of the presiding judges of the administrative judicial regions using money available under this subchapter; and

(3) is not considered a state employee for any purpose.

(e) Section 2252.901 does not apply to the appointment of a visiting associate judge under this section.

*Added by Acts 2021, 87th Legislature, Ch. 627 (HB 79), effective September 1, 2021.*

**Sec. 54A.316. LIMITATION ON LAW PRACTICE.**

An associate judge appointed under this subchapter may not engage in the private practice of law.

*Added by Acts 2021, 87th Legislature, Ch. 627 (HB 79), effective September 1, 2021.*

**Sec. 54A.317. IMMUNITY.**

An associate judge appointed under this subchapter has the judicial immunity of a district judge. All existing immunity granted an associate judge by law, express or implied, continues in full force and effect.

*Added by Acts 2021, 87th Legislature, Ch. 627 (HB 79), effective September 1, 2021.*

**INSURANCE CODE****Sec. 1109.013. PRESUMPTION OF UNCLAIMED PROCEEDS; REPORT AND DELIVERY OF PROCEEDS.**

(a) – (b) [No change.]

(c) An insurer shall report and deliver unclaimed proceeds to the comptroller as required by Chapter 74, Property Code [~~Section 1109.051~~].

(d) [Repealed.]

(e) [No change.]

*Added by Acts 2021, 87th Legislature, Ch. 52 (HB 1514), effective May 18, 2021. Section 21 of HB 1514 provides: “This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.” HB 1514 received the required two-thirds majorities and was signed by the Governor May 18, 2021.*

*Section 19 of HB 1514 provides: “Section 1109.013(c), Insurance Code, as amended by this Act, applies only to*

*a report that is due under Chapter 74, Property Code, on or after September 1, 2021.”*

*Section 20 of HB 1514 provides: “To the extent of any conflict, this Act prevails over another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.”*

**SUBCHAPTER B. DELIVERY OF PROCEEDS TO STATE****Secs. 1109.051 – 1109.056.**

*Repealed by Acts 2021, 87th Legislature, Ch. 52 (HB 1514), effective May 18, 2021. Section 21 of HB 1514 provides: “This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.” HB 1514 received the required two-thirds majorities and was signed by the Governor May 18, 2021.*

*Section 20 of HB 1514 provides: “To the extent of any conflict, this Act prevails over another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.”*

**Sec. 1109.101. PUBLIC NOTICE OF UNCLAIMED PROCEEDS.**

*Repealed by Acts 2021, 87th Legislature, Ch. 52 (HB 1514), effective May 18, 2021. See transitional note following Secs. 1109.051 – 1109.056.*

**SUBCHAPTER D. CLAIMS FOR PROCEEDS****Secs. 1109.151 – 1109.154.**

*Repealed by Acts 2021, 87th Legislature, Ch. 52 (HB 1514), effective May 18, 2021. See transitional note following Secs. 1109.051 – 1109.056.*