

The 2023 Texas Estate and Trust Legislative Update

Statutory Language Supplement

William D. Pargaman, Austin

Brink Bennett Pargaman Atkins + Sanchez

Meredith N. McIver, Austin

Osborne, Helman, Scott, Knisely & Stanton

This version was last substantively updated **August 15, 2023**. REPTL members can check for a more recent version on the REPTL website's [Estate and Trust Legislative Update page](#).

WILLIAM D. (BILL) PARGAMAN



7800 N. MoPac Expy., Suite 200, Austin, Texas 78759-8962

512.617.7328 (direct) ∞ 512.407.8588 (fax)

bpargaman@brinkbennett.com ∞ www.brinkbennett.com

Legal Experience

Bill Pargaman joined the Austin law firm of Brink Bennett Pargaman Atkins + Sanchez 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 is 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 (REPTL), Member (Chair, 2015-2016)
 - REPTL 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
- Texas Real Estate and Probate Institute (T-REP) (Board Member, 2022-Present)
- 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 & 2023 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)

MEREDITH N. MCIVER

Osborne, Helman, Scott, Knisely & Stanton L.L.P.
301 Congress Avenue, Suite 1910
Austin, Texas 78701
(512) 542-2000
mnmciver@ohsks.com

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 ACTIVITIES AND HONORS

- The College of the State Bar of Texas, Member
- Real Estate, Probate, and Trust Law Section of the State Bar of Texas, Member
 - Decedents' Estates Committee, 2022-Present
 - Leadership Academy, 2018-2019
- Tax Section of the State Bar of Texas, Member
- Austin Bar Association Estate Planning and Probate Section, Member
- Estate Planning Council of Central Texas, Member
- Texas Super Lawyers Rising Star, 2021-2023

PUBLICATIONS AND PRESENTATIONS

- Co-Author, "Face Masks, Zoom, and Quarantinis" Welcome to...The 2021 Texas Estate and Trust Legislative Update" State Bar of Texas, Advanced Estate Planning and Probate Course (2021)
- 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

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What Is This?

Since the 2009 legislative session, I've¹ 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:

- We'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.
- We often work on this late at night, past our 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.

The primary location where this paper will be posted is [the REPTL Estate & Trust Legislative Update page](#). I would recommend using the following link to find the most recent version of the paper:

www.reptl.org/Private/DrawOnePage.aspx?PageID=119

You'll find the current and previous legislative updates going as far back as 1983 (although I'm only responsible for the updates beginning in 2009). Once you click on the link to an update, you should open a new browser tab with a PDF version of this paper. However, **don't** copy that URL, because it will only be a link to that particular version of the paper, and will only work so long as that version remains posted.

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.

¹ In this supplement, "I" refers to Bill Pargaman, the author of the Texas Estate and Trust Legislative Update since the 2009 legislative session. However, beginning in 2021, Meredith McIver became a co-author of the legislative update

and provided invaluable assistance in preparing the legislative update. Meredith is the primary contributor to this supplement.

2023 Amendments to the Texas Estates Code (General and Decedents' Estates)

[The following excerpts reflect amendments made by **HB 2187, HB 3474, HB 4611, HB 4765, SB 869, SB 870, SB 1373, and SB 1612**]

Sec. 22.0295. QUALIFIED DELIVERY METHOD.

“Qualified delivery method” means delivery by:

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

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

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

Added by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023.

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 transmit the file for the proceeding in accordance with the procedures provided by Section 33.105 [~~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 2023, 88th Legislature, Ch. 861 (HB 3474), effective September 1, 2023.

Amended by Acts 2023, 88th Legislature, Ch. 256 (SB 1612), effective September 1, 2023.

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 the file for the proceeding in accordance with the procedures provided by Section 33.105 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 2023, 88th Legislature, Ch. 861 (HB 3474), effective September 1, 2023.

Amended by Acts 2023, 88th Legislature, Ch. 256 (SB 1612), effective September 1, 2023.

Sec. 33.103. TRANSFER FOR CONVENIENCE.

(a) [No change]

(b) The clerk of the court from which the probate proceeding described by Subsection (a) is transferred shall transmit the file for the proceeding in accordance with the procedures provided by Section 33.105 to the court to which the proceeding is transferred[~~;~~

~~[(1) the original file in the proceeding; and~~

~~[(2) a certified copy of the index].~~

(c) [Repealed]

Amended by Acts 2023, 88th Legislature, Ch. 861 (HB 3474), effective September 1, 2023.

Amended by Acts 2023, 88th Legislature, Ch. 256 (SB 1612), effective September 1, 2023.

Sec. 33.105. TRANSFER OF PROBATE PROCEEDING RECORD.

(a) If a probate proceeding is transferred to a court in another county under this chapter, the clerk of the transferring court shall send to the clerk of the court to which the proceeding is transferred, using the electronic filing system established under Section 72.031, Government Code:

(1) a transfer certificate and index of transferred documents;

(2) a copy of each final order;

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

(4) a copy of the original papers filed in the transferring court, including a copy of any will;

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

(6) a bill of any costs accrued in the transferring court.

(b) The clerk of the transferring court shall use the

standardized transfer certificate and index of transferred documents form developed by the Office of Court Administration of the Texas Judicial System under Section 72.037, Government Code, when transferring a proceeding under this section.

(c) The clerk of the transferring court shall keep a copy of the documents transferred under Subsection (a).

(d) The clerk of the court to which the proceeding is transferred shall:

(1) accept documents transferred under Subsection (a);

(2) docket the proceeding; and

(3) notify, using the electronic filing system established under Section 72.031, Government Code, all parties to the proceeding, the clerk of the transferring court, and, if appropriate, the transferring court's local registry that the proceeding has been docketed.

(e) 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 (d) but may not physically or electronically mark or stamp any other document transferred under Subsection (a).

(f) The clerks of both the transferee and transferring courts may each produce under Chapter 51, Government Code, certified or uncertified copies of documents transferred under Subsection (a) but must include a copy of the transfer certificate and index of transferred documents with each document produced.

(g) Sections 80.001 and 80.002, Government Code, do not apply to the transfer of documents under this section.

Added by Acts 2023, 88th Legislature, Ch. 861 (HB 3474), effective September 1, 2023.

Added by Acts 2023, 88th Legislature, Ch. 256 (SB 1612), effective September 1, 2023.

Sec. 51.052. SERVICE BY MAIL OR PRIVATE DELIVERY.

(a) [No change]

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

(c) A personal representative shall issue a notice required to be given by the representative by a qualified delivery method [~~registered or certified mail~~] and shall

serve the notice by sending [~~mailing~~] the original notice by a qualified delivery method [~~registered or certified mail~~].

(d) The county clerk or personal representative, as applicable, shall send [~~mail~~] a citation or notice under Subsection (b) or (c) with an instruction to deliver the citation or notice to the addressee only and with return receipt or other proof of delivery requested. The clerk or representative, as applicable, shall address the envelope containing the citation or notice to:

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

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

(e) Service by a qualified delivery method [~~mail~~] shall be made at least 20 days before the return day of the service, excluding the date of service. The date of service [~~by mail~~] is the date of mailing, the date of deposit with the private delivery service, or the date of delivery by the courier, as applicable.

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

(g) If a citation or notice served by a qualified delivery method [~~mail~~] is returned undelivered, a new citation or notice shall be issued. Service of the new citation or notice must be made by posting.

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. Sec. 48 of SB 1373 provides: "Sections 51.052(b), (c), (d), (e), (f), and (g), 51.055(a), 51.056, 51.103(b), 56.002(b), 113.251(c), 202.051, 202.203, 305.001, 305.002, 305.003, 305.051, 305.052, 305.053, 305.055, 308.002(d), 308.051(a), 308.053(c) and (d), 308.054(a), 356.654(b), 361.052(b), 362.005(b) and (c), 403.056(a), 404.0035(a), 452.006(a), 501.003(b), 505.005(a), 505.101(a), and 551.005(b), Estates Code, as amended by this Act, apply only to an action filed or proceeding commenced on or after the effective date of this Act."

Sec. 51.055. SERVICE ON PARTY'S ATTORNEY OF RECORD.

(a) If a party is represented by an attorney of record in a probate proceeding, each citation or notice required

to be served on the party in that proceeding shall be served instead on that attorney. A notice under this subsection may be served by delivery to the attorney in person or by a qualified delivery method [~~registered or certified mail~~].

(b) – (c) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 51.056. SERVICE ON PERSONAL REPRESENTATIVE OR RECEIVER.

Unless this title expressly provides for another method of service, the county clerk who issues a citation or notice required to be served on a personal representative or receiver shall serve the citation or notice by sending [~~mailing~~] the original citation or notice by a qualified delivery method [~~registered or certified mail~~] to:

- (1) the representative's or receiver's attorney of record; or
- (2) the representative or receiver, if the representative or receiver does not have an attorney of record.

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

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 a qualified delivery method [~~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, deposited with a private delivery service, or delivered by courier, as applicable, and the date of the mailing or deposit with the delivery service or the date of the courier delivery, as applicable; and

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

(4) if the service is made by publication:

(A) a statement:

(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 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 56.002. RESIGNATION OF RESIDENT AGENT.

(a) [No change]

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

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

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

(c) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 101.052. LIABILITY OF COMMUNITY PROPERTY FOR DEBTS [OF DECEASED SPOUSE].

(a) The community property that was by law under [~~subject to~~] the sole management, control, and disposition of a spouse or under the joint management, control, and disposition of the spouses [~~a spouse~~] during marriage continues to be subject to the liabilities of that spouse on the death of either spouse.

(a-1) The undivided one-half interest that the surviving spouse owned in community property that was by law under the sole management, control, and disposition of the deceased spouse during marriage is subject to the liabilities of the surviving spouse on the death of the deceased spouse.

(b) The undivided one-half interest that the deceased spouse owned in [~~any other nonexempt~~] community property that was by law under the sole management, control, and disposition of the surviving spouse during marriage passes to the deceased spouse's heirs or devisees charged with the liabilities of [~~debts that were enforceable against~~] the deceased spouse [~~before death~~].

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023.

Sec. 113.001. GENERAL DEFINITIONS.

In this chapter:

(1) "Account" means a contract of deposit of funds or securities between a depositor and a financial institution. The term includes:

(A) an account with cash deposits, including a checking account, savings account, certificate of deposit, and share account;

(B) an account holding securities, including stocks, bonds, and mutual funds; and

(C) another [~~, or other~~] similar arrangement.

(2) – (7) [No change]

(8) "Sums on deposit" means the balance payable or transferable on a multiple-party account including cash, interest, dividends, any type of securities, including stocks, bonds, and mutual funds, and any deposit of life insurance proceeds added to the account by reason of the death of a party.

(9) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. Sec. 50 of SB 1373 provides: "Section 113.001, Estates Code, as amended by this Act, applies to an account established before, on, or after the effective date of this Act."

Sec. 113.251. PLEDGE OF ACCOUNT.

(a) – (b) [No change]

(c) Not later than the 30th day after the date a security interest on a multiple-party account is perfected, a secured creditor that is a financial institution with accounts insured by the Federal Deposit Insurance Corporation shall provide written notice of the pledge of the account to any other party to the account who did not

create the security interest. The notice must be sent by a qualified delivery method [~~certified mail~~] to each other party at the last address the party provided to the depository bank.

(d) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 114.106. LIABILITY FOR CREDITOR CLAIMS; ALLOWANCES IN LIEU OF EXEMPT PROPERTY AND FAMILY ALLOWANCES.

(a) [No change]

(b) Notwithstanding Subsection (a), real property transferred at the transferor's death by a transfer on death deed is not considered property of the probate estate for any purpose, including for purposes of Section 546.0403 [~~531.077~~], Government Code.

(c) – (f) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 769 (HB 4611), effective April 1, 2025.

Sec. 122.201. ASSIGNMENT; WHEN ASSIGNMENT INEFFECTIVE OR LIMITED.

(a) Except as provided by Subsection (b), a [A] person who is entitled to receive property or an interest in property from a decedent under a will, by inheritance, or as a beneficiary under a life insurance contract, and does not disclaim the property under Chapter 240, Property Code, may assign the property or interest in property to any person.

(b) An assignment of property or an interest in property under Subsection (a) by a child support obligor does not take effect to the extent the assigned property or interest in property could be applied to satisfy a support obligation of the obligor that has been:

(1) administratively determined as evidence by a certified child support payment record produced by the Title IV-D agency in a Title IV-D case; or

(2) confirmed and reduced to judgment as provided by Section 157.263, Family Code.

(c) In this section:

(1) "Title IV-D agency" has the meaning assigned by Section 101.033, Family Code.

(2) "Title IV-D case" has the meaning assigned by Section 101.034, Family Code.

(d) If Subsection (b) applies, the child support obligee to whom child support arrearages are owed may enforce the child support obligation against the obligor as to the assigned property or interest in property by a

lien or by any other remedy provided by law.

(e) Unless the personal representative of a decedent's estate has actual notice of a claim that an assignment of property or an interest in property under Subsection (a) does not take effect under Subsection (b), the personal representative is not liable for transferring property pursuant to such assignment.

Amended by Acts 2023, 88th Legislature, Ch. 151 (SB 869), effective September 1, 2023.

Sec. 152.001. APPLICATION AUTHORIZED.

(a) Subject to Subsection (b), a person qualified to serve as an administrator under Section 304.001 may file an application requesting emergency intervention by a court exercising probate jurisdiction to provide for:

(1) the payment or reimbursement of the decedent's funeral and burial expenses; or

(2) the protection and storage of personal property owned by the decedent that, on the date of the decedent's death, was located in accommodations rented by the decedent.

(b) An applicant may file an application under this section only if:

(1) an application or affidavit has not been filed and is not pending under Section 256.052, 256.054, or 301.052 or Chapter 205 or 401; and

(2) the applicant needs to:

(A) obtain funds for the payment or reimbursement of the decedent's funeral and burial expenses; or

(B) gain access to accommodations rented by the decedent that contain the decedent's personal property and the applicant has been denied access to those accommodations.

Amended by Acts 2023, 88th Legislature, Ch. 861 (HB 3474), effective September 1, 2023. Sec. 13.006 of HB 3474 provides: "Sections 152.001, 152.002(a) and (b), 152.003, 152.004, and 152.051, Estates Code, as amended by this article, apply only to an application requesting emergency intervention that is filed on or after September 1, 2023. An application that is filed before September 1, 2023, is governed by the law in effect at the time the application was filed, and the former law is continued in effect for that purpose."

Sec. 152.002. CONTENTS OF APPLICATION.

(a) An emergency intervention application must be sworn and must contain:

- (1) the applicant's name, address, and interest;
- (2) facts showing an immediate necessity for

the issuance of an emergency intervention order under Subchapter B;

(3) the decedent's date of death, place of death, and residential address on the date of death;

(4) the name and address of the funeral home holding the decedent's remains or paid by the applicant for the decedent's funeral and burial; and

(5) the names of any known or ascertainable heirs and devisees of the decedent.

(b) In addition to the information required under Subsection (a), if emergency intervention is requested to obtain funds needed for the payment or reimbursement of the decedent's funeral and burial expenses, the application must also contain:

(1) the reason any known or ascertainable heirs and devisees of the decedent:

(A) cannot be contacted; or

(B) have refused to assist in the decedent's burial;

(2) a description of necessary funeral and burial procedures and a statement from the funeral home that contains a detailed and itemized description of the cost of those procedures; [~~and~~]

(3) the name and address of an individual, entity, or financial institution, including an employer, in possession of any funds of or due to the decedent, and related account numbers and balances, if known by the applicant; and

(4) if applicable, the amount paid by the applicant for the funeral and burial procedures described by Subdivision (2).

(c) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 861 (HB 3474), effective September 1, 2023. See transitional note following Sec. 152.001.

Sec. 152.003. ADDITIONAL CONTENTS OF APPLICATION: INSTRUCTIONS REGARDING DECEDENT'S FUNERAL AND REMAINS.

(a) In addition to the information required under Section 152.002, if emergency intervention is requested to obtain funds needed for the payment or reimbursement of a decedent's funeral and burial expenses, the application must also state whether there are or were any written instructions from the decedent relating to the type and manner of funeral or burial preferred by the decedent. The applicant shall:

(1) attach the instructions, if available, to the application; and

(2) fully comply, or must have fully complied, as appropriate, with the instructions.

(b) If written instructions do not exist, the applicant may not permit or have permitted the decedent's remains to be cremated unless the applicant obtains or obtained the court's permission to cremate the remains.

Amended by Acts 2023, 88th Legislature, Ch. 861 (HB 3474), effective September 1, 2023. See transitional note following Sec. 152.001.

Sec. 152.004. TIME AND PLACE OF FILING.

An emergency intervention application must be filed:

(1) with the court clerk in the county in which:

(A) the decedent was domiciled; or

(B) the accommodations rented by the decedent that contain the decedent's personal property are located; and

(2) not earlier than the third day after the date of the decedent's death and not later than nine months [~~the 90th day~~] after the date of the decedent's death.

Amended by Acts 2023, 88th Legislature, Ch. 861 (HB 3474), effective September 1, 2023. See transitional note following Sec. 152.001.

Sec. 152.051. ISSUANCE OF ORDER REGARDING FUNERAL AND BURIAL EXPENSES.

If on review of an application filed under Section 152.001 the court determines that emergency intervention is necessary to obtain funds needed for the payment or reimbursement of a decedent's funeral and burial expenses, the court may order funds of the decedent that are being held by an individual, an employer, or a financial institution to be paid directly to a funeral home or the applicant, as applicable, only for:

(1) reasonable and necessary attorney's fees for the attorney who obtained the order;

(2) court costs for obtaining the order; and

(3) funeral and burial expenses not to exceed \$5,000 as ordered by the court to provide the decedent with or to provide reimbursement for a reasonable, dignified, and appropriate funeral and burial.

Amended by Acts 2023, 88th Legislature, Ch. 861 (HB 3474), effective September 1, 2023. See transitional note following Sec. 152.001.

Sec. 201.054. ADOPTED CHILD.

(a) – (d) [No change]

(e) For purposes of this section:

(1) "Adopted [~~,"adopted]~~ child" means a child:

(A) [~~(1)~~] adopted through an existing or former statutory procedure; or

(B) [~~(2)~~] considered by a court to be equitably adopted or adopted by acts of estoppel.

(2) "Adoptive parent" means a parent:

(A) who adopted a child through an existing or former statutory procedure; or

(B) considered by a court to have equitably adopted a child or adopted a child by acts of estoppel.

Amended by Acts 2023, 88th Legislature, Ch. 631 (HB 4765), effective September 1, 2023. Sec. 2 of HB 4765 provides: "The change in law made by this Act to Section 201.054, Estates Code, applies only to the estate of a decedent who dies on or after the effective date of this Act. The estate of a decedent who dies before the effective date of this Act is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose."

Sec. 201.062. TREATMENT OF CERTAIN PARENT-CHILD RELATIONSHIPS.

(a) A probate court may enter an order declaring that the parent of a child under 18 years of age may not inherit from or through the child under the laws of descent and distribution if the court finds by clear and convincing evidence that the parent has:

(1) voluntarily abandoned and failed to support the child in accordance with the parent's obligation or ability for at least three years before the date of the child's death, and did not resume support for the child before that date;

(2) voluntarily and with knowledge of the pregnancy:

(A) abandoned the child's mother beginning at a time during her pregnancy with the child and continuing through the birth;

(B) failed to provide adequate support or medical care for the mother during the period of abandonment before the child's birth; and

(C) remained apart from and failed to support the child since birth; or

(3) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code or adjudicated under Title 3, Family Code, for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following sections of

the Penal Code:

- (A) Section 19.02 (murder);
- (B) Section 19.03 (capital murder);
- (C) Section 19.04 (manslaughter);
- (D) Section 21.11 (indecent with a child);
- (E) Section 22.01 (assault);
- (F) Section 22.011 (sexual assault);
- (G) Section 22.02 (aggravated assault);
- (H) Section 22.021 (aggravated sexual assault);
- (I) Section 22.04 (injury to a child, elderly individual, or disabled individual);
- (J) Section 22.041 (abandoning or endangering a child, elderly individual, or disabled individual);
- (K) Section 25.02 (prohibited sexual conduct);
- (L) Section 43.25 (sexual performance by a child); or
- (M) Section 43.26 (possession or promotion of child pornography).

(b) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 830 (HB 2187), effective September 1, 2023. Sec. 9 of HB 2187 provides: "The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date."

Sec. 202.005. APPLICATION FOR PROCEEDING TO DECLARE HEIRSHIP.

(1) – (6) [No change]

(7) a general description of all property, as applicable:

(A) belonging to the decedent's estate that is subject to distribution under a judgment in the proceeding; or

(B) held in trust for the benefit of the decedent~~[, as applicable]~~; and

(8) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023.

Sec. 202.051. SERVICE OF CITATION BY QUALIFIED DELIVERY METHOD [MAIL] WHEN RECIPIENT'S NAME AND ADDRESS ARE KNOWN OR ASCERTAINABLE.

Except as provided by Section 202.054, citation in a proceeding to declare heirship must be served by a qualified delivery method ~~[registered or certified mail]~~ on:

(1) each distributee who is 12 years of age or older and whose name and address are known or can be ascertained through the exercise of reasonable diligence; and

(2) the parent, managing conservator, or guardian of each distributee who is younger than 12 years of age if the name and address of the parent, managing conservator, or guardian are known or can be reasonably ascertained.

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 202.056. WAIVER OF SERVICE OF CITATION.

(a) A ~~[Except as provided by Subsection (b)(2), a]~~ distributee who is 16 years of age or older may waive citation required by this subchapter to be served on the distributee.

(b) A parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a ~~[minor]~~ distributee who is younger than 16 years of age may~~[-~~:

~~[(1) is younger than 12 years of age may]~~ waive citation required by this subchapter to be served on the distributee~~[- and~~

~~[(2) is 12 years of age or older may not waive citation required by this subchapter to be served on the distributee].~~

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. Sec. 52 of SB 1373 provides: "Section 202.056, 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. 202.151. EVIDENCE IN PROCEEDING TO DECLARE HEIRSHIP.

(a) [No change]

(b) Except as provided by Subsection (c), in a

proceeding to declare heirship, testimony regarding a decedent's heirs and family history must be taken:

(1) from two disinterested and credible witnesses in open court;

(2) [5] by deposition in accordance with Section 51.203;

(3) by a recorded statement of facts contained in:

(A) an affidavit or instrument that satisfies the requirements of Section 203.001; or

(B) a judgment of a court of record as specified by Section 203.001(a)(1)(B);[5] or

(4) in accordance with the Texas Rules of Civil Procedure.

(c) If it is shown to the court's satisfaction in a proceeding to declare heirship that, after a diligent search was made, only one disinterested and credible witness can be found who can make the required proof in the proceeding, the testimony of that witness must be taken:

(1) in open court;

(2) [5] by deposition in accordance with Section 51.203;

(3) by a recorded statement of facts contained in:

(A) an affidavit or instrument that satisfies the requirements of Section 203.001; or

(B) a judgment of a court of record as specified by Section 203.001(a)(1)(B);[5] or

(4) in accordance with the Texas Rules of Civil Procedure.

(d) Notwithstanding any other law, a person interested in an estate solely because the person is a creditor or has a claim against the estate may serve as a witness under this section if the person is otherwise a credible witness.

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. Sec. 53 of SB 1373 provides: "Section 202.151(d), Estates Code, as added 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. 202.203. CORRECTION OF JUDGMENT AT REQUEST OF HEIR NOT PROPERLY SERVED.

If an heir of a decedent who is the subject of a proceeding to declare heirship is not served with citation by a qualified delivery method [~~registered or certified mail~~] or personal service in the proceeding, the heir may:

(1) have the judgment in the proceeding corrected by bill of review:

(A) at any time, but not later than the fourth anniversary of the date of the judgment; or

(B) after the passage of any length of time, on proof of actual fraud; and

(2) recover the heir's just share of the property or the value of that share from:

(A) the heirs named in the judgment; and

(B) those who claim under the heirs named in the judgment and who are not bona fide purchasers for value.

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 251.053. EXCEPTION FOR FOREIGN AND CERTAIN OTHER WILLS.

A [~~Section 251.051 does not apply to a~~] written will does not need to meet the requirements of Section 251.051 if the will is executed in compliance with:

(1) the law of the state or foreign country where the will was executed, as that law existed at the time of the will's execution; or

(2) the law of the state or foreign country where the testator was domiciled or had a place of residence, as that law existed at the time of the will's execution or at the time of the testator's death.

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023.

Sec. 258.002. CITATION ON APPLICATION FOR PROBATE OF WILL NOT PRODUCED IN COURT.

(a) – (c) [No change]

(d) An heir who is 16 years of age or older may waive citation required by this section to be served on the heir.

(e) The parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of an heir who is younger than 16 years of age may waive citation required by this section to be served on the heir.

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. Sec. 54 of SB 1373 provides: "Sections 258.002(d) and (e), Estates Code, as added by this Act, apply only to an application for the probate of a will filed on or after the effective date of this Act. An application for the probate of a will filed before that date 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. 304.003. PERSONS DISQUALIFIED TO SERVE AS EXECUTOR OR ADMINISTRATOR.

(a) Except as provided by Subsection (b), a [A] person is not qualified to serve as an executor or administrator if the person is:

- (1) incapacitated;
- (2) a felon convicted under the laws of the United States or of any state of the United States unless, in accordance with law, the person has been pardoned or has had the person's civil rights restored;
- (3) a nonresident of this state who:
 - (A) is a natural person or corporation; and
 - (B) has not:
 - (i) appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate; or
 - (ii) had that appointment filed with the court;
- (4) a corporation not authorized to act as a fiduciary in this state; or
- (5) a person whom the court finds unsuitable.

(b) A person described by Subsection (a)(2) is not disqualified from serving as an executor of a decedent's estate under Subsection (a)(2) if:

- (1) the person is named as executor in the decedent's will;
- (2) the person is otherwise qualified to serve as an executor; and
- (3) the court approves the person serving as an executor.

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. Sec. 55 of SB 1373 provides: "Section 304.003, Estates Code, as amended by this Act, applies only to an application for letters testamentary or for letters of administration filed on or after the effective date of this Act. An application for letters testamentary or for letters of administration 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. 305.001. DEFINITIONS.

(1) [No change]

(2) "Declaration" means a written declaration that may be made and signed by a person appointed to serve as a personal representative.

(3) "Oath" means an oath that may [~~required by this chapter to~~] be taken by a person appointed to serve as a personal representative.

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 305.002. MANNER OF QUALIFICATION OF PERSONAL REPRESENTATIVE.

(a) A personal representative, other than an executor described by Subsection (b), is considered to have qualified when the representative has:

- (1) taken and filed the oath prescribed by Subchapter B or made, signed, and filed the declaration prescribed by Subchapter B;
- (2) filed the required bond with the clerk; and
- (3) obtained the judge's approval of the bond.

(b) An executor who is not required to give a bond is considered to have qualified when the executor has taken and filed the oath prescribed by Subchapter B or made, signed, and filed the declaration prescribed by Subchapter B.

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 305.003. PERIOD FOR TAKING OATH OR MAKING AND SIGNING DECLARATION.

An oath may be taken and subscribed or a declaration may be made and signed at any time before:

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

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Subchapter B, Chapter 305.

SUBCHAPTER B. OATHS OR DECLARATIONS

The 2023 Texas Estate and Trust Legislative Update

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023.

Sec. 305.051. OATH OR DECLARATION OF EXECUTOR OR ADMINISTRATOR WITH WILL ANNEXED.

(a) Before the issuance of letters testamentary or letters of administration with the will annexed, the person named as executor or appointed as administrator with the will annexed shall:

(1) take and subscribe an oath as prescribed by Subsection (b); or

(2) make and sign a declaration as prescribed by Subsection (c).

(b) If the person named as executor or appointed as administrator with the will annexed elects to take an oath under this section, the person shall take and subscribe an oath in substantially the following form:

I do solemnly swear that the writing offered for probate is the last will of _____ (insert name of testator), so far as I know or believe, and that I will well and truly perform all the duties of _____ (insert “executor of the will” or “administrator with the will annexed,” as applicable) for the estate of _____ (insert name of testator).

(c) If the person named as executor or appointed as administrator with the will annexed elects to make a declaration under this section, the person shall make and sign a declaration in substantially the following form:

My name is _____ (insert name of “executor of the will” or “administrator with the will annexed” as it appears on the order appointing the person as executor or administrator with the will annexed), my date of birth is _____ (insert date of birth of “executor of the will” or “administrator with the will annexed,” as applicable), and my address is _____ (insert street, city, state, zip code, and country of “executor of the will” or “administrator with the will annexed,” as applicable). I declare under penalty of perjury that the writing offered for probate is the last will of _____ (insert name of testator), so far as I know or believe. I also solemnly declare that I will well and truly perform all the duties of _____ (insert “executor of will” or “administrator with the will annexed,” as applicable) for the estate of _____ (insert name of testator).

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 305.052. OATH OR DECLARATION OF ADMINISTRATOR.

(a) Before the issuance of letters of administration,

the person appointed as administrator shall:

(1) take and subscribe an oath as prescribed by Subsection (b); or

(2) make and sign a declaration as prescribed by Subsection (c).

(b) If the person appointed as administrator elects to take an oath under this section, the person shall take and subscribe an oath in substantially the following form:

I do solemnly swear that _____ (insert name of decedent), deceased, died _____ (insert “without leaving any lawful will” or “leaving a lawful will, but the executor named in the will is dead or has failed to offer the will for probate or to accept and qualify as executor, within the period required,” as applicable), so far as I know or believe, and that I will well and truly perform all the duties of administrator of the estate of _____ (insert name of testator) [~~the deceased~~].

(c) If the person appointed as administrator elects to make a declaration under this section, the person shall make and sign a declaration in substantially the following form:

My name is _____ (insert name of administrator as it appears on the order appointing the person as administrator), my date of birth is _____ (insert date of birth of “administrator”), and my address is _____ (insert street, city, state, zip code, and country of “administrator”). I declare under penalty of perjury that _____ (insert name of decedent), deceased, died _____ (insert “without leaving any lawful will” or “leaving a lawful will, but the executor named in the will is dead or has failed to offer the will for probate or to accept and qualify as executor, within the period required,” as applicable), so far as I know or believe. I also solemnly declare that I will well and truly perform all the duties of administrator of the estate of _____ (insert name of decedent).

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 305.053. OATH OR DECLARATION OF TEMPORARY ADMINISTRATOR.

(a) Before the issuance of temporary letters of administration, the person appointed as temporary administrator shall:

(1) take and subscribe an oath as prescribed by Subsection (b); or

(2) make and sign a declaration as prescribed by Subsection (c).

(b) If the person appointed as temporary administrator elects to take an oath under this section,

the person shall take and subscribe an oath in substantially the following form:

I do solemnly swear that I will well and truly perform the duties of temporary administrator of the estate of _____ (insert name of decedent), deceased, in accordance with the law, and with the order of the court appointing me as temporary administrator.

(c) If the person appointed as temporary administrator elects to make a declaration under this section, the person shall make and sign a declaration in substantially the following form:

My name is _____ (insert name of temporary administrator as it appears on the order appointing the person as temporary administrator), my date of birth is _____ (insert date of birth of "temporary administrator"), and my address is _____ (insert street, city, state, zip code, and country of "temporary administrator"). I solemnly declare that I will well and truly perform all the duties of temporary administrator of the estate of _____ (insert name of decedent), in accordance with the law, and with the order of the court appointing me as temporary administrator.

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 305.055. FILING AND RECORDING OF OATH OR DECLARATION.

An oath or declaration shall be:

(1) filed with the clerk of the court granting the letters testamentary or of administration, as applicable; and

(2) recorded in the judge's probate docket.

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 308.002. REQUIRED NOTICE TO CERTAIN BENEFICIARIES AFTER PROBATE OF WILL.

(a) – (c) [No change]

(d) The notice required by this section must be sent by a qualified delivery method [~~registered or certified mail, return receipt requested~~].

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 308.051. REQUIRED NOTICE REGARDING PRESENTMENT OF CLAIMS IN GENERAL.

(a) Within one month after receiving letters testamentary or of administration, a personal

representative 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 by:

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

(2) if the decedent remitted or should have remitted taxes administered by the comptroller, sending the notice to the comptroller by a qualified delivery method [~~certified or registered mail~~].

(b) – (c) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 308.053. REQUIRED NOTICE TO SECURED CREDITOR.

(a) – (b) [No change]

(c) Notice provided under this section must be:

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

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

(d) The following shall be filed with the clerk of the court in which the letters testamentary or of administration were issued:

(1) a copy of each notice and of each return receipt or other proof of delivery receipt; and

(2) the personal representative's affidavit stating:

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

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

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 308.054. PERMISSIVE NOTICE TO UNSECURED CREDITOR.

(a) At any time before an estate administration is closed, a personal representative may give notice by a qualified delivery method [~~certified or registered mail, return receipt requested~~] to an unsecured creditor who has a claim for money against the estate.

(b) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 355.102. CLAIMS CLASSIFICATION; PRIORITY OF PAYMENT.

(a) – (d) [No change]

(e) Class 4 claims are composed of claims:

(1) for the principal amount of and accrued interest on delinquent child support and child support arrearages that have been:

(A) confirmed as a judgment or a determination of arrearages by a court under Title 5, Family Code; or

(B) administratively determined as evidenced by a certified child support payment record produced by the Title IV-D agency, as defined by Section 101.033, Family Code, in a Title IV-D case, as defined by Section 101.034, Family Code; and

(2) for unpaid child support obligations under Section 154.015, Family Code.

(f) – (i) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 152 (SB 870), effective September 1, 2023. Sec. 27 of SB 870 provides: “The change in law made by Section 355.102(e), Estates Code, as amended by this Act, applies only to the estate of a decedent who dies on or after the effective date of this Act. The estate of a decedent who dies before the effective date of this Act is governed by the law in effect on the date of the decedent’s death, and the former law is continued in effect for that purpose.”

Sec. 356.105. SALE OF CERTAIN PERSONAL PROPERTY REQUIRED.

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

(b) – (c) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023.

Sec. 356.654. EXCEPTION: BEST INTEREST OF ESTATE.

(a) [No change]

(b) Before purchasing estate property as authorized by Subsection (a), the personal representative shall give notice of the purchase by a qualified delivery method

~~[certified mail, return receipt requested]~~, unless the court requires another form of notice, to:

(1) each distributee of the estate; and

(2) each creditor whose claim remains unsettled after being presented within six months of the date letters testamentary or of administration are originally granted.

(c) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 361.052. REMOVAL WITH NOTICE.

(a) [No change]

(b) If a personal representative, as executor or administrator, fails to timely file the affidavit or certificate required by Section 308.004, the court, on the court’s own motion, may remove the personal representative after providing 30 days’ written notice to the personal representative to answer at a time and place set in the notice, by a qualified delivery method ~~[certified mail, return receipt requested,]~~ to:

(1) the representative’s last known address; and

(2) the last known address of the representative’s attorney of record.

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 362.005. CITATION AND NOTICE ON PRESENTATION OF ACCOUNT.

(a) [No change]

(b) Citation issued under Subsection (a) must:

(1) contain:

(A) a statement that an account for final settlement has been presented;

(B) the time and place the court will consider the account; and

(C) a statement requiring the person cited to appear and contest the account, if the person wishes to contest the account; and

(2) be given to each heir or distributee of the decedent by a qualified delivery method ~~[certified mail, return receipt requested,]~~ unless the court by written order directs another method of service to be given.

(c) The personal representative shall also provide to each person entitled to citation under Subsection (b) a copy of the account for final settlement either by:

(1) a qualified delivery method ~~[certified mail,~~

~~return receipt requested~~]; or

(2) electronic delivery, including facsimile or e-mail.

(d) – (f) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 403.056. NOTICES REQUIRED BY CREDITORS.

(a) Notice to the independent executor required by Sections 403.052 and 403.055 must be contained in:

(1) a written instrument that complies with Section 355.004 and is sent by a qualified delivery method [~~hand delivered with proof of receipt, or mailed by certified mail, return receipt requested with proof of receipt,~~] to the independent executor or the executor's attorney;

(2) a pleading filed in a lawsuit with respect to the claim; or

(3) a written instrument that complies with Section 355.004 or a pleading filed in the court in which the administration of the estate is pending.

(b) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 404.0035. REMOVAL OF INDEPENDENT EXECUTOR WITH NOTICE.

(a) The probate court, on the court's own motion, may remove an independent executor appointed under this subtitle after providing 30 days' written notice of the court's intention to the independent executor, requiring answering at a time and place set in the notice, by a qualified delivery method [~~certified mail, return receipt requested~~], to the independent executor's last known address and to the last known address of the independent executor's attorney of record, if the independent executor:

(1) neglects to qualify in the manner and time required by law;

(2) fails to return, before the 91st day after the date the independent executor qualifies, either an inventory of the estate property and a list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisal, and list of claims, unless that deadline is extended by court order; or

(3) fails to timely file the affidavit or certificate required by Section 308.004.

(b) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 452.006. NOTICE OF APPOINTMENT.

(a) On the date the county clerk issues letters of temporary administration:

(1) the county clerk shall post on the courthouse door a notice of the appointment to all interested persons; and

(2) the appointee shall notify, by a qualified delivery method [~~certified mail, return receipt requested~~], the decedent's known heirs of the appointment.

(b) – (c) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 453.003. GENERAL POWERS OF SURVIVING SPOUSE IF NO ADMINISTRATION IS PENDING.

(a) If there is no qualified executor or administrator of a deceased spouse's estate, the surviving spouse, as the surviving partner of the marital partnership, may:

(1) sue and be sued to recover community property;

(2) sell, mortgage, lease, and otherwise dispose of community property to pay community debts, for which a portion of community property is liable for payment;

(3) collect claims due to the community estate; and

(4) exercise other powers as necessary to:

(A) preserve the community property;

(B) discharge community obligations, for which a portion of community property is liable for payment; and

(C) wind up community affairs.

(b) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023.

Sec. 453.006. ACCOUNT OF [COMMUNITY] DEBTS AND DISPOSITION OF COMMUNITY PROPERTY.

(a) The surviving spouse shall keep a fair and full account and statement of:

(1) all [~~community~~] debts and expenses paid by

the surviving spouse; and

(2) the disposition made of the community property.

(b) The surviving spouse or personal representative shall keep a separate, distinct account of all [~~community~~] debts allowed or paid in the administration and settlement of an estate described by Section 101.052 [~~Sections 101.052(a) and (b)~~].

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023.

Sec. 453.007. DELIVERY OF COMMUNITY ESTATE ON FINAL PARTITION.

On final partition of the community estate, the surviving spouse shall deliver to the deceased spouse's heirs or devisees their interest in the estate, and the increase in and profits of the interest, after deducting from the interest:

(1) the proportion of the [~~community~~] debts chargeable to the interest;

(2) unavoidable losses;

(3) necessary and reasonable expenses; and

(4) a reasonable commission for the management of the interest.

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023.

Sec. 453.009. DISTRIBUTION OF POWERS BETWEEN PERSONAL REPRESENTATIVE AND SURVIVING SPOUSE DURING ADMINISTRATION.

(a) [No change]

(b) During administration of a deceased spouse's estate, the [~~The~~] surviving spouse, as surviving partner of the marital partnership, is entitled to:

(1) retain possession and control of the community property that was legally under the sole management of the surviving spouse during the marriage; and

(2) exercise over that property any power this chapter authorizes the surviving spouse to exercise as if there is no administration pending on the deceased spouse's estate.

(c) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023.

Sec. 501.003. CITATION AND NOTICE.

(a) [No change]

(b) For an application described by Section 501.002(b), a citation shall be issued and served by a qualified delivery method [~~registered or certified mail~~] on each devisee and heir identified in the application.

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 505.005. SERVICE OF NOTICE OR PROCESS ON SECRETARY OF STATE.

(a) On receipt of a notice or process described by Section 505.004(a)(2), the secretary of state shall promptly forward the notice or process by a qualified delivery method [~~registered or certified mail~~] to the officer, agent, or other person designated by the foreign corporate fiduciary under Section 505.004 to receive the notice or process.

(b) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

Sec. 505.101. SUIT TO RECOVER DEBT.

(a) On giving notice by a qualified delivery method [~~registered or certified mail~~] to all creditors of a decedent in this state who have filed a claim against the decedent's estate for a debt due to the creditor, a foreign executor or administrator of a person who was a nonresident at the time of death may maintain a suit in this state for the recovery of debts due to the decedent.

(b) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

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 the comptroller, by a qualified delivery method [~~certified mail~~] or e-mail, a certified copy of the court order not later than the fifth day after the date the order is issued.

Amended by Acts 2023, 88th Legislature, Ch. 205 (SB 1373), effective September 1, 2023. See transitional note following Sec. 51.052.

2023 Amendments to the Texas Estates Code (Financial Powers of Attorney)

[The following excerpts reflect amendments made by SB 1650]

Sec. 751.002. DEFINITIONS.

(1) – (4) [No change]

(5) "Principal" means an adult individual ~~[person]~~ who signs or directs the signing of the individual's ~~[person's]~~ name on a power of attorney that designates an agent to act on the individual's ~~[person's]~~ behalf.

(6) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 210 (SB 1650), effective September 1, 2023.

Sec. 751.00201. MEANING OF DISABLED OR INCAPACITATED FOR PURPOSES OF DURABLE POWER OF ATTORNEY.

Unless otherwise defined by a durable power of attorney, an individual ~~[a person]~~ is considered disabled or incapacitated for purposes of the durable power of attorney if a physician certifies in writing at a date later than the date the durable power of attorney is executed that, based on the physician's medical examination of the individual ~~[person]~~, the individual ~~[person]~~ is determined to be mentally incapable of managing the individual's ~~[person's]~~ financial affairs.

Amended by Acts 2023, 88th Legislature, Ch. 210 (SB 1650), effective September 1, 2023.

~~Sec. 751.052. RELATION OF ATTORNEY IN FACT OR AGENT TO COURT-APPOINTED GUARDIAN OF ESTATE.~~

[Repealed]

Amended by Acts 2023, 88th Legislature, Ch. 210 (SB 1650), effective September 1, 2023.

Sec. 751.133. RELATION OF AGENT TO COURT-APPOINTED GUARDIAN OF ESTATE.

(a) If, after execution of a durable power of attorney, a court ~~[of the principal's domicile]~~ appoints a:

(1) permanent guardian of the estate for a ward who is ~~[of]~~ the principal who executed the power of attorney, on the qualification of the guardian the powers and authority granted to ~~[of]~~ the agent named in the power of attorney are automatically revoked unless the court enters an order that the powers of the agent be suspended during the pendency of the guardianship of the estate; or

(2) temporary guardian of the estate for a ward who is the principal who executed the power of attorney, on the qualification of the guardian the powers and authority granted to the agent named in the power of

attorney are automatically suspended for the duration of the guardianship unless the court enters an order that:

(A) affirms and states the effectiveness of the power of attorney; and

(B) confirms the validity of the appointment of the named agent ~~[terminate on the qualification of the guardian of the estate].~~

(a-1) If the powers and authority of an ~~[The]~~ agent are revoked as provided by Subsection (a), the agent shall:

(1) deliver to the guardian of the estate all assets of the ward's ~~[incapacitated person's]~~ estate that are in the possession of the agent; and

(2) account to the guardian of the estate as the agent would account to the principal if the principal had terminated the powers of the agent.

~~(b) [Repealed]~~

Amended by Acts 2023, 88th Legislature, Ch. 210 (SB 1650), effective September 1, 2023.

Sec. 751.251. JUDICIAL RELIEF.

(a) The following may bring an action requesting a court to construe, or determine the validity or enforceability of, a durable power of attorney, or to review an agent's conduct under a durable power of attorney and grant appropriate relief:

(1) the principal or the agent;

(2) a guardian, conservator, or other fiduciary acting for the principal;

(3) a person named as a beneficiary to receive property, a benefit, or a contractual right on the principal's death;

(4) a governmental agency with ~~[regulatory]~~ authority to provide protective services to the principal ~~[protect the principal's welfare]; and~~

(5) a person who demonstrates to the court sufficient interest in the principal's welfare or estate.

(b) – (c) [No change]

(d) In an action brought under this section, the court may award costs and reasonable and necessary attorney's fees in an amount the court considers equitable and just.

Amended by Acts 2023, 88th Legislature, Ch. 210 (SB 1650), effective September 1, 2023. Sec. 9 of

SB 1650 provides: "Section 751.251, Estates Code, as amended by this Act, applies to a proceeding concerning a durable power of attorney pending on, or commenced on or after, the effective date of this Act."

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

(a) An individual ~~[A person]~~ may use a statutory durable power of attorney to grant an ~~[attorney in fact or]~~ agent powers with respect to an individual's ~~[a person's]~~ property and financial matters.

(b) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 210 (SB 1650), effective September 1, 2023.

Sec. 752.107. BUSINESS OPERATION TRANSACTIONS.

Subject to the terms of an agreement or other document governing or relating to an entity or entity ownership interest, to the extent the agent is permitted by law to act for the principal and unless the power of attorney provides otherwise, the ~~[The]~~ language conferring authority with respect to business operating transactions in a statutory durable power of attorney empowers the ~~[attorney in fact or]~~ agent to:

(1) operate, buy, sell, enlarge, reduce, or terminate an ownership ~~[a business]~~ interest;

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

~~[(A)] perform a duty or~~ ~~[;]~~ discharge a liability, or exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have ~~[under the partnership agreement, whether or not the principal is a general or limited partner];~~

(3) ~~[(B)]~~ enforce the terms of an agreement or other document governing or relating to an entity or entity ownership interest ~~[the partnership agreement by litigation, action, or otherwise]; [and]~~

(4) ~~[(C)]~~ defend, submit to arbitration, settle, or compromise litigation or an action to which the principal is a party because of an entity ownership interest ~~[membership in the partnership];~~

(5) ~~[(3)]~~ exercise in person or by proxy, or enforce by litigation, action, or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of a certificated or uncertificated ownership interest;

(6) ~~[bond, share, or other similar instrument~~

~~and]~~ defend, submit to alternative dispute resolution ~~[arbitration]~~, settle, or compromise litigation ~~[a legal proceeding]~~ to which the principal is a party concerning a certificated or uncertificated ownership interest ~~[because of a bond, share, or similar instrument];~~

~~(7) [(4)]~~ with respect to a business or entity owned solely by the principal:

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

(B) determine:

(i) the location of the business's or entity's operation;

(ii) the nature and extent of the business;

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

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

(v) the method of engaging, compensating, and dealing with the business's or entity's employees and accountants, attorneys, or ~~[and]~~ other agents ~~[and employees];~~

(C) change the name or form of organization under which the business or entity is operated and enter into an ~~[a partnership]~~ agreement with other persons ~~[or organize a corporation]~~ to take over all or part of the operation of the business or entity; and

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

(8) ~~[(5)]~~ put additional capital into a business or entity in which the principal has an interest;

(9) ~~[(6)]~~ join in a plan of reorganization, consolidation, interest exchange, conversion, or merger of the business or entity;

(10) ~~[(7)]~~ sell or liquidate a business or entity or all or part of the assets of the business or entity ~~[at the time and on the terms that the attorney in fact or agent considers desirable];~~

(11) ~~[(8)]~~ establish the value of a business or

entity under a buy-out agreement to which the principal is a party;

~~(12) [(9) do the following:~~

~~[(A)] prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business or entity and[~~

~~[(i) that are required by a governmental agency, department, or instrumentality; or~~

~~[(ii) that the attorney in fact or agent considers desirable; and~~

~~[(B)] make related payments; and~~

~~(13) [(10)] pay, compromise, or contest taxes or assessments and perform any other act [that the attorney in fact or agent considers desirable] to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business or entity, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.~~

Amended by Acts 2023, 88th Legislature, Ch. 210 (SB 1650), effective September 1, 2023. Sec. 10 of SB 1650 provides: "Section 752.107, Estates Code, as amended by this Act, applies only to a durable power of attorney, including a statutory durable power of attorney, executed on or after the effective date of this Act. A durable power of attorney, including a statutory durable power of attorney, executed before the effective date of this Act is governed by the law in effect on the date the durable power of attorney was executed, and the former law is continued in effect for that purpose."

2023 Amendments to the Texas Estates Code (Guardianship)

[The following excerpts reflect amendments made by **HB 266, HB 785, HB 2187, HB 3009, HB 3474, HB 4123, SB 1457, SB 1606, and SB 1624**]

Sec. 1002.0265. QUALIFIED DELIVERY METHOD.

“Qualified delivery method” means delivery by:

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

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

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

Added by Acts 2023, 88th Legislature, Ch. 123 (HB 785), effective September 1, 2023. Sec. 17 of HB 785 provides: “The changes in law made by this Act apply only to an action filed or a guardianship proceeding commenced on or after the effective date of this Act.”

Added by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023.

Sec. 1023.004. NOTICE.

(a) – (b) [No change]

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

(d) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 123 (HB 785), effective September 1, 2023. See transitional note following Sec. 1002.0265.

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. Sec. 32(a) of SB 1457 provides: “The changes in law made by this Act to the following provisions of the Estates Code apply only to an action filed or a guardianship proceeding commenced on or after the effective date of this Act: (1) Sections 1023.004(c), 1051.153(b), 1057.002(b), 1153.001(a), 1153.005(a), 1156.052(c), 1162.006(b), 1202.054(b-2), and 1353.004; (2) Sections 1051.052(b), (c), (d), (e), (f), and (h); (3) Sections 1051.055(a) and (b); (4) Sections 1051.056 and 1162.003; (5) Sections 1051.104(a) and (b); (6) Sections 1153.003(b) and (c); and (7) Sections 1203.052(a-1) and (b).”

Sec. 1023.006. TRANSFER OF RECORD.

(a) Not later than the 10th working day after the date [When] an order of transfer is signed [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 send, using the electronic filing system established under Section 72.031, Government Code, [transmit in electronic or paper form] to the county clerk of the county to which the guardianship was ordered transferred:

(1) a transfer certificate and index of transferred documents [the case file of the guardianship proceedings]; [and]

(2) a copy of each final order;

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

(4) a copy of the original papers filed in the transferring court;

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

(6) a bill of any costs accrued in the transferring court [a certified copy of the index of the guardianship records].

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

(c) The clerk of the transferring court shall keep a copy of the documents transferred under Subsection (a).

(d) The clerk of the court to which the proceeding is transferred shall:

(1) accept documents transferred under Subsection (a);

(2) docket the suit; and

(3) notify, using the electronic filing system established under Section 72.031, Government Code, all parties, the clerk of the transferring court, and, if appropriate, the transferring court’s local registry that the suit has been docketed.

(e) 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 (d), but may not physically or electronically mark or stamp any other document transferred under Subsection (a).

(f) The clerk of the transferring court shall send a certified copy of the order directing payments to the transferee court to:

(1) any party affected by the order and, if appropriate, to the local registry of the transferee court using the electronic filing system established under Section 72.031, Government Code; and

(2) an employer affected by the order electronically or by first class mail.

(g) The clerks of both the transferee and transferring courts may each produce under Chapter 51, Government Code, certified or uncertified copies of documents transferred under Subsection (a) but must include a copy of the transfer certificate and index of transferred documents with each document produced.

(h) Sections 80.001 and 80.002, Government Code, do not apply to the transfer of documents under this section.

Amended by Acts 2023, 88th Legislature, Ch. 861 (HB 3474), effective September 1, 2023.

Amended by Acts 2023, 88th Legislature, Ch. 256 (SB 1612), effective September 1, 2023.

Sec. 1023.007. TRANSFER EFFECTIVE.

The order transferring a guardianship does not take effect until the clerk of the court to which the proceeding is transferred accepts and docketts the case record under Section 1023.006[~~;~~]:

~~[(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 2023, 88th Legislature, Ch. 861 (HB 3474), effective September 1, 2023.

Amended by Acts 2023, 88th Legislature, Ch. 256 (SB 1612), effective September 1, 2023.

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

(a) [No change]

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

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

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

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

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

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

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

(g) [No change]

(h) The applicant or movant in a guardianship proceeding shall pay the cost of delivery of a citation or notice under this section.

Amended by Acts 2023, 88th Legislature, Ch. 123 (HB 785), effective September 1, 2023. See transitional note following Sec. 1002.0265.

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1023.004.

Sec. 1051.055. SERVICE ON PARTY'S ATTORNEY OF RECORD.

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

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

~~[(1)]~~ delivery to the attorney in person or by a qualified delivery method;

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

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

(c) – (e) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 123 (HB 785), effective September 1, 2023. See transitional note following Sec. 1002.0265.

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1023.004.

Sec. 1051.056. SERVICE ON GUARDIAN OR RECEIVER.

Unless this title expressly provides for another method of service, the county clerk who issues a citation or notice required to be served on a guardian or receiver shall serve the citation or notice by sending [mailing] the original citation or notice by a qualified delivery method ~~[registered or certified mail]~~ to:

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

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

Amended by Acts 2023, 88th Legislature, Ch. 123 (HB 785), effective September 1, 2023. See transitional note following Sec. 1002.0265.

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1023.004.

Sec. 1051.104. NOTICE BY APPLICANT FOR GUARDIANSHIP.

(a) The person filing an application for guardianship shall send [mail] a copy of the application and a notice containing the information required in the citation issued under Section 1051.102 by a qualified

delivery method ~~[registered or certified mail, return receipt requested, or by any other form of mail that provides proof of delivery]~~ to the following persons, if their whereabouts are known or can be reasonably ascertained:

(1) each adult child of the proposed ward;

(2) each adult sibling of the proposed ward;

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

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

(5) a person whom the applicant knows to hold a power of attorney signed by the proposed ward;

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

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

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

(9) each adult named in the application as an "other living relative" of the proposed ward within the third degree by consanguinity, as required by Section 1101.001(b)(11) or (13), if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child.

(b) The applicant shall file with the court:

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

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

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

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

(c) – (d) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 123 (HB 785), effective September 1, 2023. See transitional note following Sec. 1002.0265.

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1023.004.

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 or by a qualified delivery method:

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

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

(4) if the service is made by publication:

(A) a statement that:

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

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

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

(B) an affidavit that:

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

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

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

Amended by Acts 2023, 88th Legislature, Ch. 123 (HB 785), effective September 1, 2023. See transitional note following Sec. 1002.0265.

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1023.004.

Sec. 1054.001. APPOINTMENT OF ATTORNEY AD LITEM IN PROCEEDING FOR APPOINTMENT OF GUARDIAN.

In a proceeding under this title for the appointment of a guardian, the court shall appoint an attorney ad litem to represent the proposed ward's interests, including the proposed ward's expressed wishes.

Amended by Acts 2023, 88th Legislature, Ch. 939 (SB 1624), effective September 1, 2023. Sec. 20 of SB 1624 provides in part: "(a) Except as otherwise provided by this section, 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) a guardianship proceeding that is pending or commenced on or after the effective date of this Act."

Sec. 1054.003. ACCESS TO RECORDS.

An attorney ad litem appointed under Section 1054.001 or an attorney retained by a ward or proposed ward under Section 1054.006 or 1202.103 shall be provided copies of all of the current records in the guardianship case. The attorney ad litem or retained attorney may have access to all of the proposed ward's relevant medical, psychological, and intellectual testing records.

Amended by Acts 2023, 88th Legislature, Ch. 939 (SB 1624), effective September 1, 2023. See transitional note following Sec. 1054.001.

Sec. 1054.006. REPRESENTATION OF WARD OR PROPOSED WARD BY ATTORNEY.

(a) A ward or proposed ward [~~The following persons~~] may at any time retain an attorney who holds a certificate required by Subchapter E to represent the ward's or proposed ward's [~~person's~~] interests, including the ward's or proposed ward's expressed wishes, in a guardianship proceeding, including a proceeding involving the complete restoration of the ward's capacity or modification of the ward's guardianship, instead of having those interests represented by an attorney ad litem appointed under Section 1054.001, Section 1202.101, or another provision of this title[;]

~~[(1) a ward who retains the power to enter into a contract under the terms of the guardianship, subject to Section 1202.103; and~~

~~[(2) a proposed ward for purposes of a proceeding for the appointment of a guardian as long as the proposed ward has capacity to contract].~~

(b) Subject to Subsection (c), if a ward or proposed ward has retained an attorney under Subsection (a), [H] the court shall [finds that the ward or the proposed ward has capacity to contract, the court may] remove an attorney ad litem appointed under Section 1054.001, Section 1202.101, or any other provision of this title that requires the court to appoint an attorney ad litem to represent the interests of a ward or proposed ward and appoint a ward or a proposed ward's retained counsel.

(c) On the motion of a party to a guardianship proceeding or on the court's own motion, the court may hold a hearing on the ward's or proposed ward's capacity to retain an attorney under Subsection (a). The burden of proof is on the party motioning the court. If the court finds by a preponderance of evidence that the ward or proposed ward does not understand the guardianship proceeding or the purpose for which the attorney was retained, the court may appoint an attorney ad litem under Section 1054.001, Section 1202.101, or another provision of this title.

(d) An attorney retained by a ward or proposed ward under this section must represent the ward's or proposed ward's interests, including the ward's or proposed ward's expressed wishes.

Amended by Acts 2023, 88th Legislature, Ch. 939 (SB 1624), effective September 1, 2023. See transitional note following Sec. 1054.001.

Sec. 1054.007. ATTORNEYS AD LITEM.

(a) – (b) [No change]

(c) An attorney ad litem appointed for a ward or proposed ward under this title shall represent the ward's or proposed ward's interests, including the ward's or proposed ward's expressed wishes.

Added by Acts 2023, 88th Legislature, Ch. 939 (SB 1624), effective September 1, 2023. See transitional note following Sec. 1054.001.

Sec. 1054.051. APPOINTMENT OF GUARDIAN AD LITEM IN GUARDIANSHIP PROCEEDING.

(a) Subject to Subsection (b), the [The] judge may appoint a guardian ad litem to represent the interests of an incapacitated person in a guardianship proceeding.

(b) A person appointed as a guardian ad litem may not be:

(1) an interested person, as defined by Section 1002.018(1); or

(2) an attorney ad litem appointed for the

guardianship proceeding except as provided by Section 1054.052, 1202.101, or 1203.051.

Amended by Acts 2023, 88th Legislature, Ch. 939 (SB 1624), effective September 1, 2023. See transitional note following Sec. 1054.001.

Sec. 1054.157. REQUIRED TRAINING.

At least once every two years, a court investigator and a court visitor shall complete two hours of training, including one hour of training on alternatives to guardianship and supports and services available to a proposed ward in accordance with Section 22.0133, Government Code.

Added by Acts 2023, 88th Legislature, Ch. 939 (SB 1624), effective September 1, 2023. See transitional note following Sec. 1054.001.

Sec. 1057.002. RESIGNATION OF RESIDENT AGENT.

(a) [No change]

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

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

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

Amended by Acts 2023, 88th Legislature, Ch. 123 (HB 785), effective September 1, 2023. See transitional note following Sec. 1002.0265.

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1023.004.

Sec. 1101.003. AFFIDAVIT CONTAINING CONTACT INFORMATION OF CERTAIN PERSONS.

(a) Within the time prescribed by the court, a person who files an application under Section 1101.001 shall file an affidavit with the court that states the name, address, telephone number, e-mail address, and other contact information if known by the applicant for each person entitled to notice under Section 1051.104(a).

(b) An affidavit filed under this section is privileged and confidential. The affidavit may not be released or otherwise disclosed to the public.

(c) On qualification of a guardian, the court shall provide a copy of the affidavit filed under this section to the guardian if the guardian is not the person who filed the affidavit.

Added by Acts 2023, 88th Legislature, Ch. 116 (HB 266), effective September 1, 2023. Sec. 3 of HB 266 provides:

“The changes in law made by this Act apply only to an application for the appointment of a guardian filed on or after the effective date of this Act. An application for the appointment of a 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. 1101.100. DEFINITIONS.

In this subchapter:

(1) “Advanced practice registered nurse” has the meaning assigned by Section 301.152, Occupations Code.

(2) “Physician” means an individual licensed by the Texas Medical Board to practice medicine in this state.

Added by Acts 2023, 88th Legislature, Ch. 1012 (HB 3009), effective September 1, 2023. Sec. 7 of HB 3009 provides: “The changes in law made by this Act apply only to an application for the appointment of a guardian, for the complete restoration of a ward’s capacity, or for the modification of a guardianship that is filed on or after the effective date of this Act. An application 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. 1101.101. LIMITATION ON ACTS BY ADVANCED PRACTICE REGISTERED NURSE.

An advanced practice registered nurse may act under this subchapter only if the advanced practice registered nurse is acting under a physician’s delegation authority and supervision in accordance with Chapter 157, Occupations Code.

Added by Acts 2023, 88th Legislature, Ch. 1012 (HB 3009), effective September 1, 2023. See transitional note following Sec. 1101.100.

The following is the text of Sec. 1101.103 as amended by Acts 2023, 88th Legislature, Ch. 939 (SB 1624), effective September 1, 2023:

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

(a) Except as provided by Section 1101.104, the court may not grant an application to create a guardianship for an incapacitated person, other than a minor or person for whom it is necessary to have a guardian appointed only to receive funds from a governmental source, unless the applicant presents to the court a written letter or certificate from:

(1) a physician licensed in this state, if the

proposed ward’s alleged incapacity results from a physical condition or mental condition; or

(2) a psychologist licensed in this state or certified by the Health and Human Services Commission to perform the examination, in accordance with rules adopted by the executive commissioner of the commission governing examinations of that kind, if the proposed ward’s alleged incapacity results from a mental condition.

(a-1) The physician or psychologist who provides the letter or certificate under Subsection (a) must:

(1) have experience examining individuals with the physical or mental condition resulting in the proposed ward’s alleged incapacity; or

(2) have an established patient-provider relationship with the proposed ward.

(a-2) The letter or certificate required by Subsection (a) must be [that is]:

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

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

(b) A [The] letter or certificate from a physician must:

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

(A) handle business and managerial matters;

(B) manage financial matters;

(C) operate a motor vehicle;

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

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

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

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

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

(3) provide an evaluation of the proposed ward’s physical condition and mental functioning and

summarize the proposed ward's medical history if reasonably available;

(3-a) in providing an evaluation under Subdivision (3), state whether improvement in the proposed ward's physical condition and mental functioning is possible and, if so, state the period after which the proposed ward should be reevaluated to determine whether a guardianship continues to be necessary;

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

(A) understand or communicate;

(B) recognize familiar objects and individuals;

(C) solve problems;

(D) reason logically; and

(E) administer to daily life activities with and without supports and services;

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

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

(6-a) state whether a guardianship is necessary for the proposed ward and, if so, whether specific powers or duties of the guardian should be limited if the proposed ward receives supports and services; and

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

(b-1) Consistent with the scope of practice of a psychologist under Chapter 501, Occupations Code, a letter or certificate from a psychologist must include the information required under Subsection (b) only in relation to the proposed ward's mental capacity.

(c) If the court determines it is necessary, the court may appoint a physician or psychologist [~~the necessary physicians~~] to examine the proposed ward. The court must make its determination with respect to the necessity for a physician's or psychologist's examination of the proposed ward at a hearing held for that purpose. Not later than the fourth day before the date of the hearing, the applicant shall give to the proposed ward and the proposed ward's attorney ad litem written notice

specifying the purpose and the date and time of the hearing.

(d) A physician or psychologist who examines the proposed ward, other than a physician or psychologist who examines the proposed ward under Section 1101.104(2), shall make available for inspection by the attorney ad litem appointed to represent the proposed ward a written letter or certificate from:

(1) the physician that complies with the requirements of Subsections (a), (a-1), (a-2), and (b); or

(2) the psychologist that complies with the requirements of Subsections (a), (a-1), (a-2), and (b-1).

Amended by Acts 2023, 88th Legislature, Ch. 939 (SB 1624), effective September 1, 2023. Sec. 20 of SB 1624 provides in part: (a) Except as otherwise provided by this section, 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) a guardianship proceeding that is pending or commenced on or after the effective date of this Act... (c) The changes in law made by this Act to Section 1101.103, Estates Code, apply only to an application for the appointment of a guardian that is filed on or after the effective date of this Act. An application 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."

The following is the text of Sec. 1101.103 as amended by Acts 2023, 88th Legislature, Ch. 1012 (HB 3009), effective September 1, 2023:

Sec. 1101.103. DETERMINATION OF INCAPACITY OF CERTAIN ADULTS: HEALTH CARE PROVIDER [PHYSICIAN] EXAMINATION.

(a) Except as provided by Section 1101.104, the court may not grant an application to create a guardianship for an incapacitated person, other than a minor or person for whom it is necessary to have a guardian appointed only to receive funds from a governmental source, unless the applicant presents to the court a written letter or certificate from a physician or advanced practice registered nurse [~~licensed in this state~~] that is:

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

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

(a-1) For purposes of Subsection (a), a letter or certificate based on an examination by an advanced practice registered nurse must be signed by the supervising physician.

(b) The letter or certificate must:

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

(A) handle business and managerial matters;

(B) manage financial matters;

(C) operate a motor vehicle;

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

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

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

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

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

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

(3-a) in providing an evaluation under Subdivision (3), state whether improvement in the proposed ward's physical condition and mental functioning is possible and, if so, state the period after which the proposed ward should be reevaluated to determine whether a guardianship continues to be necessary;

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

(A) understand or communicate;

(B) recognize familiar objects and individuals;

(C) solve problems;

(D) reason logically; and

(E) administer to daily life activities with and without supports and services;

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

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

(6-a) state whether a guardianship is necessary for the proposed ward and, if so, whether specific powers or duties of the guardian should be limited if the proposed ward receives supports and services; and

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

(b-1) For purposes of Subsection (b)(2), the opinion of an advanced practice registered nurse that is based on an examination of a proposed ward conducted by the advanced practice registered nurse under delegation from and supervision by a physician and is signed by the supervising physician is considered the supervising physician's opinion.

(c) If the court determines it is necessary, the court may appoint the necessary physicians or advanced practice registered nurses to examine the proposed ward. The court must make its determination with respect to the necessity for a physician's or advanced practice registered nurse's examination of the proposed ward at a hearing held for that purpose. Not later than the fourth day before the date of the hearing, the applicant shall give to the proposed ward and the proposed ward's attorney ad litem written notice specifying the purpose and the date and time of the hearing.

(d) A physician or advanced practice registered nurse who examines the proposed ward, other than a physician, advanced practice registered nurse, or psychologist who examines the proposed ward under Section 1101.104(2), shall make available for inspection by the attorney ad litem appointed to represent the proposed ward a written letter or certificate from the physician or advanced practice registered nurse that complies with the requirements of Subsections (a) and (b).

Amended by Acts 2023, 88th Legislature, Ch. 1012 (HB 3009), effective September 1, 2023. See transitional note following Sec. 1101.100.

The following is the text of Sec. 1101.104 as amended by Acts 2023, 88th Legislature, Ch. 938 (SB 1606), effective September 1, 2023:

Sec. 1101.104. EXAMINATIONS AND DOCUMENTATION REGARDING INTELLECTUAL DISABILITY.

(a) If an intellectual disability is the basis of the proposed ward's alleged incapacity, the court may not grant an application to create a guardianship for the

proposed ward unless the applicant presents to the court a written letter or certificate that:

(1) complies with Sections 1101.103(a) and (b); or

(2) shows that not earlier than 24 months before the hearing date:

(A) the proposed ward has been examined by a physician or psychologist licensed in this state or certified by the Health and Human [Department of Aging and Disability] Services Commission to perform the examination, in accordance with rules of the executive commissioner of the commission [Health and Human Services Commission] governing examinations of that kind, and the physician's or psychologist's written findings and recommendations include a determination of an intellectual disability; or

(B) a physician or psychologist licensed in this state or certified by the Health and Human [Department of Aging and Disability] Services Commission to perform examinations described by Paragraph (A) updated or endorsed in writing a prior determination of an intellectual disability for the proposed ward made by a physician or psychologist licensed in this state or certified by the commission [department].

(b) A physician or psychologist described by Subsection (a)(2)(A) must preferably have experience examining individuals with an intellectual disability. For purposes of this subsection, a physician or psychologist is considered to have experience examining individuals with an intellectual disability if the physician or psychologist has an established patient-provider relationship with the proposed ward.

Amended by Acts 2023, 88th Legislature, Ch. 938 (SB 1606), effective September 1, 2023. Sec. 5 of SB 1606 provides: "The changes in law made by this Act apply only to an application for the appointment of a guardian, for the complete restoration of a ward's capacity, or for the modification of a guardianship, as applicable, that is filed on or after the effective date of this Act. An application 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."

The following is the text of Sec. 1101.104 as amended by Acts 2023, 88th Legislature, Ch. 1012 (HB 3009), effective September 1, 2023:

Sec. 1101.104. EXAMINATIONS AND DOCUMENTATION REGARDING INTELLECTUAL DISABILITY.

(a) If an intellectual disability is the basis of the

proposed ward's alleged incapacity, the court may not grant an application to create a guardianship for the proposed ward unless the applicant presents to the court a written letter or certificate that:

(1) complies with Sections 1101.103(a) and (b); or

(2) shows that not earlier than 24 months before the hearing date:

(A) the proposed ward has been examined by a physician or advanced practice registered nurse or by a psychologist licensed in this state or certified by the Health and Human [Department of Aging and Disability] Services Commission to perform the examination, in accordance with rules of the executive commissioner of the commission [Health and Human Services Commission] governing examinations of that kind, and the [physician's or psychologist's] written findings and recommendations include a determination of an intellectual disability; or

(B) a physician or advanced practice registered nurse or a psychologist licensed in this state or certified by the Health and Human [Department of Aging and Disability] Services Commission to perform examinations described by Paragraph (A) updated or endorsed in writing a prior determination of an intellectual disability for the proposed ward made by a physician or by a psychologist licensed in this state or certified by the commission [department].

(a-1) For purposes of Subsection (a), a letter or certificate based on an examination by an advanced practice registered nurse must be signed by the supervising physician.

(b) For purposes of Subsection (a)(2)(B), the determination of an advanced practice registered nurse that is based on an examination of a proposed ward conducted by the advanced practice registered nurse under delegation from and supervision by a physician and is signed by the supervising physician is considered the supervising physician's determination.

Amended by Acts 2023, 88th Legislature, Ch. 1012 (HB 3009), effective September 1, 2023. See transitional note following Sec. 1101.100.

The following is the text of Sec. 1102.002 as amended by Acts 2023, 88th Legislature, Ch. 1012 (HB 3009), effective September 1, 2023:

Sec. 1102.002. ESTABLISHMENT OF PROBABLE CAUSE FOR INVESTIGATION.

(a) In this section:

(1) "Advanced practice registered nurse" has the meaning assigned by Section 301.152, Occupations

Code.

(2) "Physician" has the meaning assigned by Section 1101.100.

(b) An advanced practice registered nurse may act under this section only if the advanced practice registered nurse is acting under a physician's delegation authority and supervision in accordance with Chapter 157, Occupations Code.

(c) To establish probable cause under Section 1102.001, the court may require:

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

(2) a written letter or certificate from a physician or advanced practice registered nurse who has examined the person believed to be incapacitated that satisfies the requirements of Section 1101.103, except that the letter must be:

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

(B) based on an examination the physician or advanced practice registered nurse performed not earlier than the 120th day before that date.

(d) For purposes of Subsection (c)(2), a letter or certificate based on an examination by an advanced practice registered nurse must be signed by the supervising physician. The opinion of an advanced practice registered nurse that is based on an examination of a proposed ward conducted by the advanced practice registered nurse under delegation from and supervision by a physician and signed by the supervising physician is considered the supervising physician's opinion.

Amended by Acts 2023, 88th Legislature, Ch. 1012 (HB 3009), effective September 1, 2023. See transitional note following Sec. 1101.100.

The following is the text of Sec. 1102.002 as amended by Acts 2023, 88th Legislature, Ch. 939 (SB 1624), effective September 1, 2023:

Sec. 1102.002. ESTABLISHMENT OF PROBABLE CAUSE FOR INVESTIGATION.

To establish probable cause under Section 1102.001, the court may require:

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

(2) a written letter or certificate from a

physician or psychologist who has examined the person believed to be incapacitated that satisfies the requirements of Section 1101.103, except that the letter must be:

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

(B) based on an examination the physician or psychologist performed not earlier than the 120th day before that date.

Amended by Acts 2023, 88th Legislature, Ch. 939 (SB 1624), effective September 1, 2023. See transitional note following Sec. 1054.001.

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

(a) The surviving parent of an adult individual who is an incapacitated person may, if the parent is the guardian of the person or estate of the adult individual, by will or written declaration appoint an eligible person to serve as guardian of the person or estate, as applicable, of the adult individual;

(1) after the parent dies;

(2) in the event the parent resigns as guardian of the person or estate; or

(3) in the event of the parent's incapacity.

(a-1) If the surviving parent is both the guardian of the person and estate of the adult individual, the surviving parent may by will or written declaration appoint different eligible persons to serve as guardian of the person and guardian of the estate.

(b) After the surviving parent dies or resigns as guardian, or if the court finds the surviving parent has become an incapacitated person after being appointed the adult individual's guardian, the court shall appoint the person or persons designated in the will or declaration to serve as guardian of the person, guardian of the estate, or both, in preference to any other person otherwise entitled to serve as guardian under this title, unless the court finds that the person designated to serve as guardian:

(1) is disqualified;

(2) is deceased;

(3) refuses to serve; or

(4) would not serve the adult individual's best interests.

(c) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023.

Sec. 1104.353. NOTORIOUSLY BAD CONDUCT; PRESUMPTION CONCERNING BEST INTEREST.

(a) [No change]

(b) It is presumed to be not in the best interests of a ward or incapacitated person to appoint as guardian of the ward or incapacitated person a person who has been finally convicted of:

(1) any sexual offense, including sexual assault, aggravated sexual assault, and prohibited sexual conduct;

(2) aggravated assault;

(3) injury to a child, elderly individual, or disabled individual;

(4) abandoning or endangering a child, elderly individual, or disabled individual;

(5) terroristic threat; or

(6) continuous violence against the family of the ward or incapacitated person.

Amended by Acts 2023, 88th Legislature, Ch. 830 (HB 2187), effective September 1, 2023. Sec. 9 of HB 2187 provides: "The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date."

Sec. 1104.402. COURT CLERK'S DUTY TO OBTAIN CRIMINAL HISTORY RECORD INFORMATION; AUTHORITY TO CHARGE FEE.

(a) Except as provided by Section [~~1104.403~~] 1104.404[~~5~~] or 1104.406(a), the clerk of the county having venue of the proceeding for the appointment of a guardian shall obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to[~~;~~]:

~~[(1) a private professional guardian;~~

~~[(2) each person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian;~~

~~[(3) each person employed by a private professional guardian who will:~~

~~[(A) have personal contact with a ward or proposed ward;~~

~~[(B) exercise control over and manage a~~

~~ward's estate; or~~

~~[(C) perform any duties with respect to the management of a ward's estate;~~

~~[(4) each person employed by or volunteering or contracting with a guardianship program to provide guardianship services to a ward of the program on the program's behalf; or~~

~~[(5)] any [other] person proposed to serve as a guardian under this title, including a proposed temporary guardian, [and] a proposed successor guardian, or any person who will have contact with the proposed ward or the proposed ward's estate on behalf of the proposed guardian, other than an attorney or a person who is a certified guardian.~~

(b) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 871 (HB 4123), effective June 13, 2023. Sec. 72 of HB 4123 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, 2023." HB 4123 received the required two-thirds majorities and was signed by the Governor June 13, 2023.

~~Sec. 1104.403. SUBMISSION OF CRIMINAL HISTORY RECORD INFORMATION BY PROPOSED GUARDIAN.~~

[Repealed]

Repealed by Acts 2023, 88th Legislature, Ch. 871 (HB 4123), effective June 13, 2023. See transitional note following Sec. 1104.402.

Sec. 1104.404. EXCEPTION FOR INFORMATION CONCERNING CERTAIN PERSONS.

(a) The clerk described by Section 1104.402 is not required to obtain criminal history record information from the Department of Public Safety for a person if the Judicial Branch Certification Commission conducted a criminal history check on the person under Sections 155.203 and 155.207 [~~Chapter 155~~], Government Code. However, the clerk shall obtain criminal history record information from the Federal Bureau of Investigation identification division relating to each person described by Section 1104.402.

(b) The commission [~~board~~] shall provide to the clerk [~~at the court's request~~] the criminal history record information that was obtained from the Department of Public Safety [~~or the Federal Bureau of Investigation~~]. The commission is prohibited from disseminating criminal history record information that was obtained

from the Federal Bureau of Investigation under Section 411.1408, Government Code, for purposes of determining whether an applicant is ineligible for certification as a guardian.

Amended by Acts 2023, 88th Legislature, Ch. 871 (HB 4123), effective June 13, 2023. See transitional note following Sec. 1104.402.

Sec. 1104.405. INFORMATION FOR EXCLUSIVE USE OF COURT.

(a) Criminal history record information obtained or provided under Section 1104.402[~~1104.403,~~] or 1104.404 is privileged and confidential and is for the exclusive use of the court. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order [~~or consent of the person being investigated~~]. The court may use the criminal history record information only to determine whether to:

(1) appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or the Health and Human Services Commission; or

(2) appoint any person proposed to serve as a guardian under this title, including a proposed temporary guardian, a proposed successor guardian, or any person who will have contact with the proposed ward or the proposed ward's estate on behalf of the proposed guardian, other than an attorney or a certified guardian.

(b) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 871 (HB 4123), effective June 13, 2023. See transitional note following Sec. 1104.402.

~~Sec. 1104.407. DUTY TO PROVIDE INFORMATION ON REQUEST.~~

[Repealed]

Repealed by Acts 2023, 88th Legislature, Ch. 871 (HB 4123), effective June 13, 2023. See transitional note following Sec. 1104.402.

~~Sec. 1104.408. INFORMATION FOR EXCLUSIVE USE OF COURT OR GUARDIANSHIP CERTIFICATION PROGRAM OF JUDICIAL BRANCH CERTIFICATION COMMISSION.~~

[Repealed]

Repealed by Acts 2023, 88th Legislature, Ch. 871 (HB 4123), effective June 13, 2023. See transitional note following Sec. 1104.402.

~~Sec. 1104.410. USE OF INFORMATION BY GUARDIANSHIP CERTIFICATION PROGRAM OF~~

~~JUDICIAL BRANCH CERTIFICATION COMMISSION.~~

[Repealed]

Repealed by Acts 2023, 88th Legislature, Ch. 871 (HB 4123), effective June 13, 2023. See transitional note following Sec. 1104.402.

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; and

(4) filed the bond with the clerk.

(b) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. Sec. 32(b) of SB 1457 provides: "Sections 1105.002(a), 1106.001(a), 1106.005, and 1155.002(a), Estates Code, as amended by this Act, and Section 1151.0525, Estates Code, as added by this Act, apply to a guardianship created before, on, or after the effective date of this Act."

Sec. 1106.001. ISSUANCE OF CERTIFICATE AS LETTERS OF GUARDIANSHIP.

(a) When a person who is appointed guardian has qualified under Section 1105.002, the clerk shall issue to the guardian a certificate under the court's seal stating:

(1) the fact of the appointment and of the qualification;

(2) the date of the appointment and of the qualification; and

(3) the date the letters of guardianship expire.

(b) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1105.002.

Sec. 1106.005. EFFECT OF LETTERS [~~OR CERTIFICATE~~].

(a) Letters of guardianship [~~or a certificate~~] issued as prescribed by [~~under~~] Section 1106.001 under the court's seal by [~~of~~] the clerk of the court that granted the letters are [~~is~~] sufficient evidence of:

(1) the appointment and qualification of the guardian; and

(2) the date of qualification.

(b) The court order that appoints the guardian is evidence of the authority granted to the guardian and of the scope of the powers and duties that the guardian may exercise only after the date letters of guardianship [~~or a certificate~~ has] have been issued under Section 1106.001.

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1105.002.

Sec. 1151.0525. ACCESS AND MANAGEMENT OF WARD'S FUNDS BY GUARDIAN OF PERSON.

(a) This section applies only to the guardian of the person of a ward for whom the court has not appointed a guardian of the estate.

(b) On application to and order from the court, the guardian of the person of a ward may access, manage, and spend the ward's funds in an amount not to exceed \$20,000 per year for the ward's benefit. The court shall require the guardian to file a new bond or a rider to an existing bond that meets the surety requirements for a guardian of the estate's bond under Section 1105.160.

(c) A guardian of the person shall include any expenditures made for the benefit of the ward if authorized by court order under Subsection (b) in the annual report required by Section 1163.101.

(d) When there is no longer a need for the guardian of the person to access, manage, or spend the ward's funds, the guardian of the person shall file a sworn affidavit of fulfillment with the court. After the filing of the affidavit, the court, on motion filed with the court, may authorize the guardian to file a new bond or a rider to an existing bond that meets the requirements for a guardian of the person's bond under Section 1105.102, and may discharge the guardian of the person and the guardian's sureties on a bond required by Subsection (b).

Added by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1105.002.

Sec. 1151.056. GUARDIAN'S DUTY TO INFORM CERTAIN RELATIVES ABOUT WARD'S HEALTH AND RESIDENCE.

(a) – (g) [No change]

(h) Unless the guardian knows the information is not correct, a guardian of a ward shall rely on the contact information contained in the affidavit required by Section 1101.003 to provide notice about the ward to a relative of the ward under this section.

Added by Acts 2023, 88th Legislature, Ch. 116 (HB 266), effective September 1, 2023. See transitional note following Sec. 1101.003.

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 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; and

(26) to have private communications with the ward's physicians or other medical professionals, unless the court, after a hearing requested by the ward's guardian, orders the private communications to be limited due to:

(A) the risk of substantial harm to the ward;

or

(B) the communications being unduly burdensome to the physician or medical professional.

(c) [No change]

Added by Acts 2023, 88th Legislature, Ch. 939 (SB 1624), effective September 1, 2023. See transitional note following Sec. 1054.001.

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 in the county in which the letters were issued; and

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

(b) – (c) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 123 (HB 785), effective September 1, 2023. See transitional note following Sec. 1002.0265.

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1023.004.

Sec. 1153.003. REQUIRED NOTICE TO CERTAIN CLAIMANTS.

(a) A guardian of an estate is not required to give a notice required by Section 1153.001 or 1153.003 if another person also appointed as guardian or a former guardian has given that notice.

(b) Notice provided under this section must be:

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

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

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

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

(2) the guardian's affidavit stating:

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

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

Amended by Acts 2023, 88th Legislature, Ch. 123 (HB 785), effective September 1, 2023. See transitional note following Sec. 1002.0265.

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1023.004.

Sec. 1153.005. ONE NOTICE SUFFICIENT; LIABILITY FOR FAILURE TO GIVE REQUIRED NOTICE.

(a) A guardian of an estate is not required to give a notice required by Section 1153.001 or 1153.003 if

another person also appointed as guardian or a former guardian has given that notice.

(b) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1023.004.

Sec. 1155.002. COMPENSATION FOR CERTAIN GUARDIANS OF THE PERSON.

(a) The court may authorize compensation for a guardian serving as a guardian of the person alone from available funds of the ward's estate or other funds available for that purpose. The court may set the compensation in an amount not to exceed the greater of \$3,000 per year or five percent of the ward's gross income.

(b) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1105.002.

Sec. 1156.052. ALLOWANCE FOR WARD'S SPOUSE, MINOR CHILDREN, OR INCAPACITATED ADULT CHILDREN ~~(DEPENDENT)~~.

(a) – (b) [No change]

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

(d) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 123 (HB 785), effective September 1, 2023. See transitional note following Sec. 1002.0265.

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1023.004.

Sec. 1162.003. NOTICE OF APPLICATION FOR ESTABLISHMENT OF ESTATE OR OTHER TRANSFER PLAN.

A person who makes an application to the court under Section 1162.001 shall send [~~mail~~] notice of the application by a qualified delivery method [~~certified mail~~] to:

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

(2) the ward's spouse;

(3) the ward's dependents; and

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

Amended by Acts 2023, 88th Legislature, Ch. 123 (HB 785), effective September 1, 2023. See transitional note following Sec. 1002.0265.

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1023.004.

Sec. 1162.006. NOTICE OF APPLICATION FOR INSPECTION.

(a) [No change]

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

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

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

Amended by Acts 2023, 88th Legislature, Ch. 123 (HB 785), effective September 1, 2023. See transitional note following Sec. 1002.0265.

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1023.004.

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; and

(J) supports and services the ward has received or is currently receiving, as described by Subsection (d);

(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, 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 Certification Commission 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.

(d) The statements in the sworn affidavit regarding the ward's supports and services under Subsection (c)(4)(J) must include:

(1) information regarding actions the guardian is taking to encourage the development of the ward's maximum self-reliance and independence;

(2) a list of all the supports and services the ward is currently receiving, including whether the ward:

(A) has a representative payee;

(B) receives services from a local mental health authority or local intellectual and developmental disability authority;

(C) receives any supports and services under Medicaid, including under a Medicaid waiver program authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n); and

(D) receives any supports and services informally;

(3) where the ward receives the supports and services described by Subdivision (2);

(4) who provides the supports and services described by Subdivision (2);

(5) a list of the supports and services the ward previously received or attempted to receive and why the support or service was discontinued or not received; and

(6) the guardian's opinion on whether the ward has the capacity or sufficient capacity with supports and services for complete restoration of the ward's capacity or modification of the guardianship under Chapter 1202 or the reasons why the ward does not have the capacity or sufficient capacity with supports and services for complete restoration of the ward's capacity or modification of the guardianship under Chapter 1202.

Added by Acts 2023, 88th Legislature, Ch. 939 (SB 1624), effective September 1, 2023. See transitional note following Sec. 1054.001.

Sec. 1201.052. ANNUAL DETERMINATION; HEARING.

(a) To determine whether a guardianship should be continued, modified, or terminated, the court in which the guardianship proceeding is pending:

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

(2) may review annually any other guardianship.

(b) A court in which the guardianship proceeding is pending may conduct a hearing under this section.

Amended by Acts 2023, 88th Legislature, Ch. 939 (SB 1624), effective September 1, 2023. See transitional note following Sec. 1054.001.

Sec. 1201.053. METHOD OF DETERMINATION.

(a) In reviewing a guardianship under Section 1201.052, a statutory probate court shall review any ~~may~~:

(1) ~~review any~~ report prepared by:

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

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

(C) a court visitor under Section 1054.104;

(2) ~~conduct a hearing; or~~

~~[(3) review an]~~ annual account prepared under Subchapter A, Chapter 1163; and

~~[(3) -or-a]~~ report prepared under Subchapter C, Chapter 1163.

(a-1) Unless a court orders that a report be completed more frequently, if a report described by Subsection (a)(1) is required under Section 1054.153 or

1054.104, the court investigator or court visitor, as appropriate, shall prepare an additional report described by Subsection (a)(1) every three years beginning on the date the original letters of guardianship are issued.

(a-2) Before preparing an additional report under Subsection (a-1), the court investigator or court visitor, as appropriate, shall:

(1) meet with the ward in person, using necessary and appropriate communication supports;

(2) present the bill of rights for wards under Section 1151.351 to the ward in the ward’s preferred language and manner of communication;

(3) document the ward’s statement of guardianship, as described by Subsection (a-3); and

(4) document the supports and services currently available to the ward and whether the guardian’s rights and powers can be limited because a less restrictive alternative to guardianship is appropriate.

(a-3) The ward’s statement of guardianship:

(1) must include:

(A) whether the ward desires a full restoration of the ward’s capacity or modification of the ward’s guardianship; and

(B) any other information the ward wishes to share with the court; and

(2) may be in the form of:

(A) a written statement made by the ward and filed with the court by the court investigator or court visitor preparing the report;

(B) a verbal statement made to the court investigator or court visitor, as applicable, that is documented in writing and filed with the court by the person receiving the statement; or

(C) a verbal or written statement made by the ward during a hearing either in person or remotely through other means.

(b) A court that is not a statutory probate court:

(1) shall review:

(A) any account prepared under Subchapter A, Chapter 1163; and

(B) any report prepared under Subchapter C, Chapter 1163 or Subsection (a-1); and

(2) may use any other method to review a guardianship under Section 1201.052 that is determined appropriate by the court according to the court’s caseload and available resources.

Amended by Acts 2023, 88th Legislature, Ch. 939 (SB 1624), effective September 1, 2023. See transitional note following Sec. 1054.001.

Sec. 1202.054. INFORMAL REQUEST FOR ORDER BY WARD; INVESTIGATION AND REPORT.

(a) [No change]

~~(b-1)~~ [Repealed]

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

(1) acknowledging receipt of the informal letter; and

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

(c) [No change]

~~(d)~~ [Repealed]

Amended by Acts 2023, 88th Legislature, Ch. 123 (HB 785), effective September 1, 2023. See transitional note following Sec. 1002.0265.

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1023.004.

Sec. 1202.101. APPOINTMENT OF ATTORNEY AD LITEM.

(a) Unless the ward retains an attorney under Section 1202.103, the ~~[The]~~ court shall appoint an attorney ad litem to represent a ward in a proceeding for the complete restoration of the ward’s capacity or for the modification of the ward’s guardianship. Unless otherwise provided by the court, the attorney ad litem shall represent the ward only for purposes of the restoration or modification proceeding. The attorney ad litem shall represent the ward’s interests, including the ward’s expressed wishes.

(b) The attorney ad litem has an attorney-client relationship with the ward the attorney ad litem is appointed to represent under this section.

Amended by Acts 2023, 88th Legislature, Ch. 939 (SB 1624), effective September 1, 2023. See transitional note following Sec. 1054.001.

Sec. 1202.152. ~~[PHYSICIAN’S]~~ LETTER OR CERTIFICATE REQUIRED.

(a) Subject to Section 1202.1521, the applicant must present to the court and the ~~[The]~~ court shall

consider a written letter or certificate as evidence of capacity, or sufficient capacity with supports and services, at a hearing under Section 1202.151 from:

(1) a physician licensed in this state, if the ward's incapacity resulted from a physical condition or mental condition; or

(2) a psychologist licensed in this state or certified by the Health and Human Services Commission to perform the examination, in accordance with rules adopted by the executive commissioner of the commission governing examinations of that kind, if the ward's incapacity resulted from a mental condition.

(a-1) The physician or psychologist who provides the letter or certificate under Subsection (a) must:

(1) have experience examining individuals with the physical or mental condition resulting in the ward's incapacity; or

(2) have an established patient-provider relationship with the ward.

(a-2) The letter or certificate required by Subsection (a) must be:

(1) signed by the physician or psychologist; and

(2) dated:

(A) not earlier than the 120th day before the date the application was filed; or

(B) after the date the application was filed but before the date of the hearing.

(a-3) The court may consider the following evidence of capacity, or sufficient capacity with supports and services, at a hearing under Section 1202.151:

(1) a statement from a representative of the local mental health authority or the local intellectual and developmental disability authority listing services received by the ward and the effectiveness of those services;

(2) medical records;

(3) affidavits of treating professionals regarding the effectiveness of supports and services the ward is receiving;

(4) documentation from a health care provider providing supports or services to the ward under Medicaid, including a Medicaid waiver program authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n);

(5) an affidavit of the ward's employer or day habilitation program manager regarding the ward's ability to perform the necessary tasks;

(6) documentation from the United States Social Security Administration identifying the ward's representative payee; or

(7) any other evidence demonstrating the ward's capacity [may not grant an order completely restoring a ward's capacity or modifying a ward's guardianship under an application filed under Section 1202.051 unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that is dated:

[(1) not earlier than the 120th day before the date the application was filed; or

[(2) after the date the application was filed but before the date of the hearing].

(b) [No change]

(c) If the court determines it is necessary, the court shall [may] appoint a physician or psychologist to complete an examination of the ward. The physician or psychologist must be chosen by the ward, provided, however, that if the ward makes no choice, the ward's physician or psychologist of choice is not available, or additional information is needed or required after an examination by the ward's physician or psychologist of choice, the court may appoint the necessary physicians or psychologists to examine the ward. A physician appointed by the court must examine the ward in the same manner and to the same extent as a ward is examined by a physician under Section 1101.103 or 1101.104.

Amended by Acts 2023, 88th Legislature, Ch. 938 (SB 1606), effective September 1, 2023. See transitional note following Sec. 1101.104.

Amended by Acts 2023, 88th Legislature, Ch. 939 (SB 1624), effective September 1, 2023. Sec. 20 of SB 1624 provides in part: "(a) Except as otherwise provided by this section, 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) a guardianship proceeding that is pending or commenced on or after the effective date of this Act. (b) The changes in law made by this Act to Section 1202.152, Estates Code, apply only to a proceeding for the complete restoration of capacity or modification of a guardianship commenced on or after the effective date of this Act. A proceeding described by this section commenced before the effective date of this Act 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. 1202.152. HEALTH CARE PROVIDER'S [PHYSICIAN'S] LETTER OR CERTIFICATE REQUIRED.

(a) In this section:

(1) "Advanced practice registered nurse" has the meaning assigned by Section 301.152, Occupations Code.

(2) "Physician" has the meaning assigned by Section 1101.100.

(b) An advanced practice registered nurse may act under this section only if the advanced practice registered nurse is acting under a physician's delegation authority and supervision in accordance with Chapter 157, Occupations Code.

(c) The court may not grant an order completely restoring a ward's capacity or modifying a ward's guardianship under an application filed under Section 1202.051 unless the applicant presents to the court a written letter or certificate from a physician or advanced practice registered nurse licensed in this state that is dated:

(1) not earlier than the 120th day before the date the application was filed; or

(2) after the date the application was filed but before the date of the hearing.

(c-1) For purposes of Subsection (c), a letter or certificate based on an examination by an advanced practice registered nurse must be signed by the supervising physician.

(d) [(b)] A letter or certificate presented under Subsection (c) [(a)] must:

(1) describe the nature and degree of incapacity, including the medical history if reasonably available, or state that, in the physician's opinion, the ward has the capacity, or sufficient capacity with supports and services, to:

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

(B) care for the ward's own physical health; and

(C) manage the ward's financial affairs;

(2) provide a medical prognosis specifying the estimated severity of any incapacity;

(3) state how or in what manner the ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the ward's physical or mental health;

(4) state whether any current medication affects the ward's demeanor or the ward's ability to participate fully in a court proceeding;

(5) describe the precise physical and mental conditions underlying a diagnosis of senility, if applicable; and

(6) include any other information required by the court.

(e) For purposes of Subsection (d), the opinion of an advanced practice registered nurse that is based on an examination of a ward conducted by the advanced practice registered nurse under delegation from and supervision by a physician and is signed by the supervising physician is considered the supervising physician's opinion.

(f) [(e)] If the court determines it is necessary, the court may appoint the necessary physicians or advanced practice registered nurses to examine the ward in the same manner and to the same extent as a ward is examined by a physician or advanced practice registered nurse under Section 1101.103 or 1101.104.

Amended by Acts 2023, 88th Legislature, Ch. 1012 (HB 3009), effective September 1, 2023. See transitional note following Sec. 1101.100.

Sec. 1202.1521. LETTER OR CERTIFICATE: REQUIREMENTS IF ALLEGED INCAPACITY BASED ON INTELLECTUAL DISABILITY.

(a) If an intellectual disability is the basis of a ward's alleged incapacity, instead of the letter or certificate required under Section 1202.152(a), the court shall, subject to Subsection (c), consider a written letter or certificate the applicant presents from:

(1) a physician licensed in this state; or

(2) a psychologist licensed in this state or certified by the Health and Human Services Commission to perform the examination, in accordance with rules adopted by the executive commissioner of the commission governing examinations of that kind.

(b) The letter or certificate must:

(1) state, in the physician's or psychologist's opinion, whether the ward has the capacity, or sufficient capacity with supports and services, to do any of the activities listed in Section 1202.152(b)(1);

(2) state how or in what manner the ward's ability to make or communicate reasonable decisions concerning himself or herself is affected by the ward's mental capacity;

(3) include any other information required by the court; and

(4) be dated within the period prescribed by Section 1202.152(a)(1) or (2).

(c) The physician or psychologist who provides a letter or certificate under this section must preferably have experience examining individuals with an intellectual disability. For purposes of this subsection, a physician or psychologist is considered to have experience examining individuals with an intellectual disability if the physician or psychologist has an established patient-provider relationship with the ward.

Added by Acts 2023, 88th Legislature, Ch. 938 (SB 1606) effective September 1, 2023. See transitional note following Sec. 1101.104.

Sec. 1202.1521. LETTER OR CERTIFICATE: REQUIREMENTS IF ALLEGED INCAPACITY BASED ON INTELLECTUAL DISABILITY.

(a) Subject to Section 1202.1521, the applicant must present to the court and the [The] court shall consider a written letter or certificate as evidence of capacity, or sufficient capacity with supports and services, at a hearing under Section 1202.151 from:

(1) a physician licensed in this state, if the ward's incapacity resulted from a physical condition or mental condition; or

(2) a psychologist licensed in this state or certified by the Health and Human Services Commission to perform the examination, in accordance with rules adopted by the executive commissioner of the commission governing examinations of that kind, if the ward's incapacity resulted from a mental condition.

(a-1) The physician or psychologist who provides the letter or certificate under Subsection (a) must:

(1) have experience examining individuals with the physical or mental condition resulting in the ward's incapacity; or

(2) have an established patient-provider relationship with the ward.

(a-2) The letter or certificate required by Subsection (a) must be:

(1) signed by the physician or psychologist; and

(2) dated:

(A) not earlier than the 120th day before the date the application was filed; or

(B) after the date the application was filed but before the date of the hearing.

(a-3) The court may consider the following evidence of capacity, or sufficient capacity with supports and services, at a hearing under Section 1202.151:

(1) a statement from a representative of the local mental health authority or the local intellectual and developmental disability authority listing services received by the ward and the effectiveness of those services;

(2) medical records;

(3) affidavits of treating professionals regarding the effectiveness of supports and services the ward is receiving;

(4) documentation from a health care provider providing supports or services to the ward under Medicaid, including a Medicaid waiver program authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n);

(5) an affidavit of the ward's employer or day habilitation program manager regarding the ward's ability to perform the necessary tasks;

(6) documentation from the United States Social Security Administration identifying the ward's representative payee; or

(7) any other evidence demonstrating the ward's capacity [may not grant an order completely restoring a ward's capacity or modifying a ward's guardianship under an application filed under Section 1202.051 unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that is dated:

[1] not earlier than the 120th day before the date the application was filed; or

[2] after the date the application was filed but before the date of the hearing].

(c) If the court determines it is necessary, the court shall [may] appoint a physician or psychologist to complete an examination of the ward. The physician or psychologist must be chosen by the ward, provided, however, that if the ward makes no choice, the ward's physician or psychologist of choice is not available, or additional information is needed or required after an examination by the ward's physician or psychologist of choice, the court may appoint the necessary physicians or psychologists to examine the ward. A physician appointed by the court must examine the ward in the same manner and to the same extent as a ward is examined by a physician under Section 1101.103 or 1101.104.

Amended by Acts 2023, 88th Legislature, Ch. 939 (SB 1624), effective September 1, 2023. See transitional note following Sec. 1054.001.

Sec. 1202.155. ADDITIONAL REQUIREMENTS FOR ORDER RESTORING WARD'S CAPACITY.

If the court finds that a ward is no longer an incapacitated person, the order completely restoring the ward's capacity must contain findings of fact and specify, in addition to the information required by Section 1202.154:

(1) that the ward is no longer an incapacitated person;

(2) that there is no further need for a guardianship of the person or estate of the ward;

(3) ~~[if the ward's incapacity resulted from a mental condition, that the ward's mental capacity is completely restored;~~

~~[(4)]~~ that the guardian is required to:

(A) immediately settle the guardianship in accordance with this title; and

(B) deliver all of the remaining guardianship estate to the ward; and

(4) ~~[(5)]~~ that the clerk shall revoke letters of guardianship when the guardianship is finally settled and closed.

Amended by Acts 2023, 88th Legislature, Ch. 938 (SB 1606), effective September 1, 2023. See transitional note following Sec. 1101.104.

Sec. 1203.052. REMOVAL WITH NOTICE.

(a) [No change]

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

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

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

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

(c) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 123 (HB 785), effective September 1, 2023. See transitional note following Sec. 1002.0265.

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1023.004.

Sec. 1351.001. AUTHORITY TO SELL MINOR'S INTEREST IN PROPERTY WITHOUT GUARDIANSHIP.

(a) A parent or managing conservator of a minor who is not a ward may apply to the court under this subchapter for an order to sell an interest of the minor in property without being appointed guardian if the net value of the interest does not exceed \$250,000 ~~[\$100,000]~~.

(b) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. Sec. 32(c) of SB 1457 provides: "Sections 1351.001(a), 1351.052, 1352.052(a), and 1352.102, Estates Code, as amended by this Act, apply only to an application for a court order filed on or after the effective date of this Act. An application for a court order 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. 1351.052. AUTHORITY TO SELL WARD'S INTEREST IN PROPERTY WITHOUT APPOINTMENT AS GUARDIAN OF THE ESTATE IN THIS STATE.

A guardian of the person of a ward or a guardian of the person or estate of a ward appointed by a foreign court may apply to the court under this subchapter for an order to sell an interest in property in the ward's estate without being appointed guardian of the ward's estate in this state if the net value of the interest does not exceed \$250,000 ~~[\$100,000]~~.

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1351.001.

Sec. 1352.052. AUTHORITY TO MORTGAGE MINOR'S INTEREST WITHOUT GUARDIANSHIP.

(a) If the net value of a minor's interest in a residence homestead does not exceed \$250,000 ~~[\$100,000]~~, a parent, subject to Subsection (b), or managing conservator of the minor may apply to the court under this subchapter for an order authorizing the parent or managing conservator to receive on the minor's behalf, without being appointed guardian, an

extension of credit that is secured wholly or partly by a lien on the homestead.

(b) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1351.001.

Sec. 1352.102. AUTHORITY TO MORTGAGE MINOR WARD'S INTEREST WITHOUT GUARDIANSHIP OF THE ESTATE.

If the net value of a minor ward's interest in a residence homestead does not exceed \$250,000 [~~\$100,000~~], the guardian of the person of the ward may apply to the court under this subchapter for an order authorizing the guardian to receive on the ward's behalf an extension of credit that is secured wholly or partly by a lien on the homestead.

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1351.001.

Sec. 1353.004. APPOINTMENT OF GUARDIAN OF THE ESTATE UNDER CERTAIN CIRCUMSTANCES.

(a) – (c) [No change]

(c-1) If the court finds that the ward's spouse fails to comply with an order described by Subsection (c), the court may, after notice and a hearing, order any third party or entity in possession to deliver to the incapacitated spouse's guardian of the estate the community property described by Subsection (c).

(d) – (e) [No change]

Added by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1023.004.

Sec. 1355.001. PAYMENT OF CLAIMS TO RESIDENT CREDITOR.

(a) In this section, "resident creditor" means a person who:

(1) is a resident of this state; and

(2) is entitled to money in an amount that is \$250,000 [~~\$100,000~~] or less, the right to which is liquidated and is uncontested in any pending lawsuit.

(b) – (e) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. Sec. 32(d) of SB 1457 provides: "Sections 1355.001(a) and 1355.002(a) and (b), Estates Code, as amended by this Act, apply only to a payment made by a debtor on or after the effective date of this Act. A payment made by a debtor before the effective date of this Act is governed by the law in effect on the date the payment was made, and the former law is continued in effect for that purpose."

Sec. 1355.002. PAYMENT OF CLAIMS TO NONRESIDENT CREDITOR.

(a) In this section, "creditor" means a person who is entitled to money in an amount that is not more than \$250,000 [~~\$100,000~~] owing as a result of transactions in this state, the right to which is liquidated and is uncontested in any pending lawsuit in this state.

(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 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) – (f) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 207 (SB 1457), effective September 1, 2023. See transitional note following Sec. 1355.001.

2023 Amendments to the Texas Trust Code

[The following excerpt reflects amendments made by **HB 2196**, **HB 2333**, and **SB 801**]

Sec. 111.004. DEFINITIONS.

(1) – (3) [No change]

(4) "Express trust" means a fiduciary relationship with respect to property which arises as a manifestation by the settlor of an intention to create the relationship and which subjects the person holding title to the property to equitable duties to deal with the property:

(A) for the benefit of another person; or

(B) for a particular purpose, in the case of a trust subject to Subchapter F.

(5) – (25) [No change]

Added by Acts 2023, 88th Legislature, Ch. 1121 (HB 2333), effective June 18, 2023. Sec. 3 of HB 2333 provides: "Subchapter F, Chapter 112, Property Code, as added by this Act, applies only to a trust created on or after the effective date of this Act." Sec. 4 of HB 2333 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, 2023." HB 2333 received the required two-thirds majorities and was signed by the Governor June 18, 2023.

Sec. 112.035. SPENDTHRIFT TRUSTS.

(a) – (f) [No change]

(f-1) A beneficiary of the trust or the estate of a beneficiary of the trust may not be considered to be a settlor merely because the beneficiary, in any capacity:

(1) held or exercised a testamentary power of appointment other than a general power of appointment;

(2) held a testamentary general power of appointment; or

(3) exercised a testamentary general power of appointment in favor of or for the benefit of the takers in default of the appointive assets.

(f-2) If a beneficiary of the trust exercised a testamentary general power of appointment in favor of or for the benefit of any appointee other than the takers in default of the appointive assets, the appointive assets are:

(1) subject to the claims of creditors of the beneficiary, but only to the extent the beneficiary's own property is insufficient to meet the beneficiary's debts;

and

(2) unless appointed to the beneficiary's estate, not subject to:

(A) administration as a part of the beneficiary's estate;

(B) recovery by the personal representative of the beneficiary's estate, except as provided by Section 2207B, Internal Revenue Code of 1986; or

(C) the payment of taxes or administration expenses of the beneficiary's estate.

(f-3) For the purposes of Subsections (f-1) and (f-2), "general power of appointment" has the meaning assigned by Section 2041(b)(1), Internal Revenue Code of 1986.

(g) – (h) [No change]

Added by Acts 2023, 88th Legislature, Ch. 446 (HB 2196), effective June 9, 2023. Sec. 8 of HB 2196 provides: "Except as otherwise provided by this Act, the changes in law made by this Act apply to a trust created before, on, or after the effective date of this Act." Sec. 9 of HB 2196 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, 2023." HB 2196 received the required two-thirds majorities and was signed by the Governor June 9, 2023.

Sec. 112.036. RULE AGAINST PERPETUITIES.

(a) [No change]

(b) For purposes of this section, the effective date [of a trust] is the date the governing instrument creating an interest in the trust becomes irrevocable with respect to that interest. If an interest in one trust is distributed to another trust with a different effective date, the effective date of that interest in the second trust becomes the earlier of the effective dates of the two trusts.

(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, not later than the later of:

(A) 300 years after the effective date; or

(B) 21 years after some life in being at the time of the effective date, plus a period of gestation; or

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

(d) – (f) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 446 (HB 2196), June 9, 2023. See transitional note following Sec. 112.035.

Sec. 112.0715. CREATION OF SECOND TRUST.

(a) A second trust may be created by a distribution of principal under Section 112.072 or 112.073 to a second trust that retains the name used by the first trust. The second trust may retain, subject to applicable federal law, the tax identification number of the first trust [created under the same trust instrument as the first trust from which the principal is distributed or to a trust created under a different trust instrument].

(b) If a second trust is created by a distribution of principal under Section 112.072 or 112.073 to a trust that retains [created under] the name of [same trust instrument as] the first trust [from which the principal is distributed], the property is not required to be retitled.

(e) [Repealed]

Amended by Acts 2023, 88th Legislature, Ch. 446 (HB 2196), June 9, 2023. Sec. 7 of HB 2196 provides: “Sections 112.0715(a) and (b), Property Code, as amended by this Act, are intended by the legislature to be a codification of the common law of this state in effect immediately before the effective date of this Act.” See transitional note following Sec. 112.035.

SUBCHAPTER F. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY

Sec. 112.121. VALIDITY OF TRUST; APPLICABILITY.

(a) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary. A noncharitable purpose may include seeking economic or noneconomic benefits.

(b) This subchapter does not apply to a trust created under Section 112.037.

Added by Acts 2023, 88th Legislature, Ch. 1121 (HB 2333), effective June 18, 2023. See transitional note following Sec. 111.004.

Sec. 112.122. ENFORCEMENT OF TRUST.

(a) A trust created under this subchapter must be enforced by one or more persons appointed in the terms of the trust to serve as a trust enforcer.

(b) A trust enforcer shall enforce the purpose and terms of the trust. The trust enforcer is not a beneficiary of the trust, but has the rights of a beneficiary provided under this title and the common law of this state, or as otherwise provided by the terms of the trust.

(c) A trust enforcer shall exercise any authority granted under the terms of the trust or the provisions of this section as a fiduciary owing a duty to the trust and is entitled to reasonable compensation for serving as trust enforcer.

(d) A trust enforcer may consent to, waive, object to, or petition an appropriate court concerning any matter regarding the purpose or administration of the trust.

(e) Except as otherwise provided by the terms of the trust, if more than one person is acting as a trust enforcer, any action in that capacity must be decided by the majority vote of the persons acting as trust enforcers. If there are an even number of trust enforcers and a majority vote cannot be established, the decision of the trustee controls.

(f) The terms of the trust may provide for the succession of a trust enforcer or a process of appointing any successor trust enforcer.

(g) If no person is serving as a trust enforcer for a trust created under this subchapter, a court properly exercising jurisdiction shall appoint one or more persons to serve as the trust enforcer.

Added by Acts 2023, 88th Legislature, Ch. 1121 (HB 2333), effective June 18, 2023. See transitional note following Sec. 111.004.

Sec. 112.123. APPLICATION OR DISTRIBUTION OF TRUST PROPERTY.

(a) Property of a trust created under this subchapter may be applied only to the intended purpose of the trust, except to the extent that a court finds that the value of the trust property exceeds the amount required for the intended purpose of the trust.

(b) Except as provided by the terms of the trust, property found by a court not to be required for the trust’s intended purpose shall be distributed:

(1) as provided by the terms of the trust; or

(2) if the trust does not provide for the distribution of such property, to the settlor if then living or to the settlor’s successors in interest.

Added by Acts 2023, 88th Legislature, Ch. 1121 (HB 2333), effective June 18, 2023. See transitional note following Sec. 111.004.

Sec. 114.087. INSTRUMENT NAMING TRUST AS PARTY.

(a) The trustee of a trust is considered for all purposes to be the named party to an instrument that names the trust as a party to the instrument in any capacity, unless the trust is a legal entity under state law.

(b) Subsection (a) is effective as of the effective date of the original instrument.

(c) The trustee of a trust that is the named party to a recorded instrument may be, but is not required to be, identified by a correction instrument under Section 5.028.

(d) A document purporting to be a certification of trust under Section 114.086 that is recorded in the county in which real property of the trust is located is presumed to correctly identify the trust and the trustee and may be relied upon by a good faith purchaser or lender for value.

Added by Acts 2023, 88th Legislature, Ch. 345 (SB 801), effective September 1, 2023. Sec. 3 of SB 801 provides: "The changes in law made by this Act apply to an instrument executed on, before, or after the effective date of this Act."

Sec. 115.014. GUARDIAN OR ATTORNEY AD LITEM.

(a) [No change]

(b) At any point in a proceeding a court may appoint an attorney ad litem to represent any interest that the court considers necessary, including an attorney ad litem to defend an action under Section 114.083 for a beneficiary of the trust who is a minor or who has been adjudged incompetent, if the court determines that representation of the interest otherwise would be inadequate.

(c) – (e) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 446 (HB 2196), effective June 9, 2023. See transitional note following Sec. 112.035.

2023 Selected Amendments to the Texas Property Code (Excluding Trust Code)

[The following excerpts reflect amendments made by **HB 2196** and **SB 801**]

**Sec. 5.028. CORRECTION INSTRUMENTS:
NONMATERIAL CORRECTIONS.**

(a) A person who has personal knowledge of facts relevant to the correction of a recorded original instrument of conveyance may prepare or execute a correction instrument to make a nonmaterial change that results from a clerical error, including:

(1) a correction of an inaccurate or incorrect element in a legal description, such as a distance, angle, direction, bearing or chord, a reference to a plat or other plat information, a lot or block number, a unit, building designation, or section number, an appurtenant easement, a township name or number, a municipality, county, or state name, a range number or meridian, a certified survey map number, or a subdivision or condominium name; or

(2) an addition, correction, or clarification of:

(A) a party's name, including the spelling of a name, a first or middle name or initial, a suffix, an alternate name by which a party is known, the identity of the trustee of a trust named as party, or a description of an entity as a corporation, company, or other type of organization;

(B) a party's marital status;

(C) the date on which the conveyance was executed;

(D) the recording data for an instrument referenced in the correction instrument; or

(E) a fact relating to the acknowledgment or authentication.

(a-1) – (d) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 345 (SB 801), effective September 1, 2023. Sec. 3 of SB 801 provides: "The changes in law made by this Act apply to an instrument executed on, before, or after the effective date of this Act."

Sec. 41.0021. HOMESTEAD IN QUALIFYING TRUST.

(a) In this section, "qualifying trust" means an express trust:

(1) in which the instrument or court order creating the express trust, an instrument transferring property to the trust, or any other agreement that is binding on the trustee provides that a settlor or beneficiary of the trust has the right to:

(A) revoke the trust without the consent of

another person other than a spouse who is also a settlor of the trust;

(B) exercise an inter vivos general power of appointment over the property that qualifies for the homestead exemption, either alone or when aggregated with property subject to an inter vivos general power of appointment held by a spouse who is also a settlor of the trust; or

(C) use and occupy the residential property as the settlor's or beneficiary's principal residence at no cost, or rent free and without charge, except for ~~[to the settlor or beneficiary, other than payment of]~~ taxes and other costs and expenses specified in the instrument or court order:

(i) for the life of the settlor or beneficiary;

(ii) for the shorter of the life of the settlor or beneficiary or a term of years specified in the instrument or court order; or

(iii) until the date the trust is revoked or terminated by an instrument or court order that describes the property with sufficient certainty to identify the property and that is recorded in the real property records of the county in which the property is located ~~[and that describes the property with sufficient certainty to identify the property]~~; and

(2) the trustee of which acquires the property in an instrument of title or under a court order that:

(A) describes the property with sufficient certainty to identify the property and the interest acquired; and

(B) is recorded in the real property records of the county in which the property is located.

(b) – (e) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 446 (HB 2196), effective June 9, 2023. Sec. 8 of HB 2196 provides: "Except as otherwise provided by this Act, the changes in law made by this Act apply to a trust created before, on, or after the effective date of this Act." Sec. 9 of HB 2196 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, 2023." HB 2196 received the required two-thirds majorities and was signed by the Governor June 9, 2023.

Sec. 240.008. POWER TO DISCLAIM BY FIDUCIARY ACTING IN FIDUCIARY CAPACITY.

(a) – (b) [No change]

(c) Except as provided by Subsection (c-1), the ~~The~~ following disclaimers by a fiduciary acting in a fiduciary capacity are not effective unless approved by a court of competent jurisdiction:

(1) a disclaimer by a personal representative who is not an independent administrator or independent executor;

(2) a disclaimer by the trustee of a management trust created under Chapter 1301, Estates Code;

(3) a disclaimer by the trustee of a trust created under Section 142.005; or

(4) a disclaimer that would result in an interest in or power over property passing to the person making the disclaimer.

(c-1) A disclaimer described by Subsection (c)(4) does not require court approval if the disclaimer is authorized under Subtitle P, Title 2, Estates Code.

(d) – (g) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 210 (SB 1650). Sec. 11 of SB 1650 provides: "Section 240.008, 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 2023 Amendments

[The following excerpts reflect amendments made by **HB 1547, HB 3162, SB 944, SB 1249, SB 1300, SB 1381, SB 1624, SB 1646, SB 1780, and SB 2186**]

FAMILY CODE

Sec. 3.401. DEFINITIONS.

(1) "Benefited estate" means a marital estate that receives a benefit from another marital estate.

(2) "Conferring estate" means a marital estate that confers a benefit on another marital estate.

(3) – (5) [No change]

Added by Acts 2023, 88th Legislature, Ch. 411 (HB 1547), effective September 1, 2023. Sec. 6 of HB 1547 provides: "The change in law made by this Act applies to a claim for reimbursement that is pending in a trial court on the effective date of this Act or that is filed on or after that date."

Sec. 3.402. CLAIM FOR REIMBURSEMENT; OFFSETS.

(a) A claim for reimbursement exists when one or both spouses use property of one marital estate to confer on the property of another marital estate a benefit which, if not repaid, would result in unjust enrichment to the benefited estate [For purposes of this subchapter, a claim for reimbursement includes:

[1) payment by one marital estate of the unsecured liabilities of another marital estate;

[2) inadequate compensation for the time, toil, talent, and effort of a spouse by a business entity under the control and direction of that spouse;

[3) the reduction of the principal amount of a debt secured by a lien on property owned before marriage, to the extent the debt existed at the time of marriage;

[4) the reduction of the principal amount of a debt secured by a lien on property received by a spouse by gift, devise, or descent during a marriage, to the extent the debt existed at the time the property was received;

[5) the reduction of the principal amount of that part of a debt, including a home equity loan:

[(A) incurred during a marriage;

[(B) secured by a lien on property; and

[(C) incurred for the acquisition of, or for capital improvements to, property;

[(6) the reduction of the principal amount of that part of a debt:

~~[(A) incurred during a marriage;~~

~~[(B) secured by a lien on property owned by a spouse;~~

~~[(C) for which the creditor agreed to look for repayment solely to the separate marital estate of the spouse on whose property the lien attached; and~~

~~[(D) incurred for the acquisition of, or for capital improvements to, property;~~

~~[(7) the refinancing of the principal amount described by Subdivisions (3)–(6), to the extent the refinancing reduces that principal amount in a manner described by the applicable subdivision;~~

~~[(8) capital improvements to property other than by incurring debt; and~~

~~[(9) the reduction by the community property estate of an unsecured debt incurred by the separate estate of one of the spouses].~~

(b) A spouse seeking reimbursement to a marital estate must prove:

(1) that the spouse or both spouses used property of the marital estate to confer a benefit on the property of another marital estate;

(2) the value of the benefit described by Subdivision (1); and

(3) that unjust enrichment of the benefited estate will occur if the benefited estate is not required to reimburse the conferring estate.

(c) For purposes of this subchapter, the property of a marital estate confers a benefit on another marital estate's property if:

(1) one or both spouses used property of the conferring estate to pay a debt, liability, or expense that in equity and good conscience should have been paid from the benefited estate's property;

(2) one or both spouses used property of the conferring estate to make improvements on the benefited estate's real property, and the improvements resulted in an enhancement in the value of the benefited estate's real property; or

(3) one or both spouses used time, toil, talent, or effort to enhance the value of property of a spouse's separate estate beyond that which was reasonably necessary to manage and preserve the spouse's separate property, and for which the community marital estate did

not receive adequate compensation.

(d) For purposes of this subchapter, the value of the benefit conferred by the property of one marital estate on the property of another marital estate is determined as of the date of the trial's commencement and:

(1) if the benefit resulted from the use of the conferring estate's property to pay a debt, liability, or expense that in equity and good conscience should have been paid from the benefited estate's property, then the value of the benefit conferred is measured by the amount of the debt, liability, or expense paid by the conferring estate;

(2) if the benefit resulted from the use of the conferring estate's property to make improvements on the benefited estate's real property, then the value of the benefit conferred is measured by the enhancement in the value of the benefited estate's real property that resulted from the improvements; or

(3) if the benefit resulted from the use of time, toil, talent, or effort to enhance the value of property of a spouse's separate estate, then the value of the benefit conferred is measured by the value of the time, toil, talent, or effort beyond that which was reasonably necessary to manage and preserve the spouse's separate property.

(e) The determination of whether unjust enrichment will occur if one marital estate is not required to reimburse another marital estate is a question for the court to decide.

(f) The court shall resolve a claim for reimbursement by using equitable principles, including the principle that claims for reimbursement may be offset against each other if the court determines it to be appropriate.

(g) A claim for reimbursement of a marital estate by one spouse may be offset by the value of any related benefit that the other spouse proves that the conferring estate received from the benefited estate, including:

(1) the value of the use and enjoyment of the property by the conferring estate, except that the separate marital estate of a spouse may not claim an offset for use and enjoyment of a primary or secondary residence owned wholly or partly by the separate marital estate against contributions made by the community marital estate to the separate marital estate;

(2) income received by the conferring estate from the property of the benefited estate; or

(3) any reduction in the amount of any income tax obligation of the conferring estate by virtue of the conferring estate claiming tax-deductible items relating to the property of the benefited estate, such as

depreciation, interest, taxes, maintenance, or other deductible payments.

~~(h) [(e) Benefits for the use and enjoyment of property may be offset against a claim for reimbursement for expenditures to benefit a marital estate, except that the separate estate of a spouse may not claim an offset for use and enjoyment of a primary or secondary residence owned wholly or partly by the separate estate against contributions made by the community estate to the separate estate.~~

~~[(d) Reimbursement for funds expended by a marital estate for improvements to another marital estate shall be measured by the enhancement in value to the benefited marital estate.~~

~~[(e)] The party seeking an offset to a claim for reimbursement has the burden of proof with respect to the offset.~~

Amended by Acts 2023, 88th Legislature, Ch. 411 (HB 1547), effective September 1, 2023. See transitional note following Sec. 3.401.

Sec. 3.404. APPLICATION OF INCEPTION OF TITLE RULE; OWNERSHIP INTEREST NOT CREATED.

(a) [No change]

(b) A claim for reimbursement under this subchapter does not create an ownership interest in property, but does create a claim against the property of the benefited estate by the conferring ~~[contributing]~~ estate. The claim matures on dissolution of the marriage or the death of either spouse.

Amended by Acts 2023, 88th Legislature, Ch. 411 (HB 1547), effective September 1, 2023. See transitional note following Sec. 3.401.

Sec. 3.406. EQUITABLE LIEN.

(a) On dissolution of a marriage, the court may impose an equitable lien on the property of a benefited ~~[marital]~~ estate to secure a claim for reimbursement against that property by a conferring ~~[contributing marital]~~ estate.

(b) On the death of a spouse, a court may, on application for a claim for reimbursement brought by the surviving spouse, the personal representative of the estate of the deceased spouse, or any other person interested in the estate, as defined by Chapter 22, Estates Code, impose an equitable lien on the property of a benefited ~~[marital]~~ estate to secure a claim for reimbursement against that property by a conferring ~~[contributing marital]~~ estate.

Amended by Acts 2023, 88th Legislature, Ch. 411 (HB 1547), effective September 1, 2023. See transitional note following Sec. 3.401.

Sec. 3.411. CUMULATIVE REMEDIES.

The remedies provided by this subchapter are not exclusive and are in addition to any other remedy provided by law.

Added by Acts 2023, 88th Legislature, Ch. 411 (HB 1547), effective September 1, 2023. See transitional note following Sec. 3.401.

FINANCE CODE**Sec. 182.502. CONVERSION OF TRUST INSTITUTION INTO STATE TRUST COMPANY.**

(a) [No change]

(b) A trust institution applying to convert into a state trust company may receive a certificate of authority to do business as a state trust company if the banking commissioner finds that:

(1) the trust institution is not engaging in a pattern or practice of unsafe and unsound fiduciary or banking practices;

(2) the trust institution has adequate capitalization for a state trust company to act as a fiduciary at the same locations as the trust institution is acting as a fiduciary before the conversion;

(3) the trust institution can be expected to operate profitably after the conversion;

(4) the officers and directors of the trust institution as a group have sufficient fiduciary ~~[banking]~~ experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the trust institution will operate as a state trust company in compliance with law; and

(5) each principal shareholder has sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the trust institution will be free from improper or unlawful influence or interference with respect to the trust institution's operation as a state trust company in compliance with law.

(c) – (d) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 98 (SB 1646), effective May 19, 2023. Sec. 4 of SB 1646 provides: "Section 182.502(b), Finance Code, as amended by this Act, applies only to an application for conversion filed on or after the effective date of this Act. An application for conversion 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. 5 of SB 1646 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, 2023." SB 1646 received the required two-thirds majorities and was signed by the Governor May 19, 2023.

Sec. 184.002. INVESTMENT IN STATE TRUST COMPANY FACILITIES.

(a) – (b) [No change]

(c) A state trust company shall comply with regulatory accounting principles in accounting for its investment in and depreciation of trust company facilities, furniture, fixtures, and equipment ~~[dispose of any real property subject to Subsection (a) not later than the fifth anniversary of the date the real property:~~

~~(1) was acquired, except as otherwise provided by rules adopted under this subtitle;~~

~~(2) ceases to be used as a state trust company facility; or~~

~~(3) ceases to be a state trust company facility as provided by Subsection (b)].~~

Amended by Acts 2023, 88th Legislature, Ch. 98 (SB 1646) effective May 19, 2023. Sec. 5 of SB 1646 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, 2023." SB 1646 received the required two-thirds majorities and was signed by the Governor May 19, 2023.

GOVERNMENT CODE**Sec. 22.0133. JUDICIAL, COURT INVESTIGATOR, AND COURT VISITOR TRAINING RELATED TO GUARDIANSHIPS.**

The supreme court, in consultation with the Judicial Branch Certification Commission, shall ensure that at least one hour of training related to alternatives to guardianships and supports and services that are available to a proposed ward is provided to each judge with jurisdiction to hear a guardianship proceeding, each court investigator appointed under Section 1054.156, Estates Code, and each court visitor appointed under Section 1054.103, Estates Code, at least once every two years.

Added by Acts 2023, 88th Legislature, Ch. 939 (SB 1624), effective September 1, 2023. Sec. 21 of SB 1624 provides: "(a) Not later than December 1, 2023, the Texas Supreme Court shall adopt the rules necessary to provide the training required under

Section 22.0133, Government Code, as added by this Act. (b) Notwithstanding Section 22.0133, Government Code, as added by this Act, a judge who is in office on the effective date of this Act or a court investigator or court visitor described by Section 22.0133, Government Code, as added by this Act, who is appointed on or before the effective date of this Act must complete the training required by Section 22.0133, Government Code, as added by this Act, not later than December 1, 2025.”

Sec. 406.101. DEFINITIONS.

(1) [No change]

(1-a) "Document" means a tangible instrument or electronic document.

(2) – (10) [No change]

(11) "Principal" means an individual:

(A) whose [electronic] signature is notarized in an online notarization; or

(B) taking an oath or affirmation from the online notary public but not in the capacity of a witness for the online notarization.

(13) "Sign" means, with the present intent to authenticate or adopt a record, to:

(A) execute or adopt a tangible symbol; or

(B) execute an electronic signature, as defined by Section 322.002, Business & Commerce Code.

(14) "Signature" means a tangible symbol or electronic signature that evidences the signing of a record executed or adopted by a person with the intent to sign the document.

Amended by Acts 2023, 88th Legislature, Ch. 258 (SB 1780), effective January 1, 2024.

Sec. 406.108. ELECTRONIC RECORD OF ONLINE NOTARIZATIONS.

(a) An online notary public shall keep a secure electronic record of electronic documents notarized by the online notary public. The electronic record must contain for each online notarization:

(1) the date and time of the online notarization;

(2) the type of notarial act;

(3) the type, the title, or a description of the [electronic] document or proceeding;

(4) the printed name and address of each principal involved in the transaction or proceeding;

(5) evidence of identity of each principal

involved in the transaction or proceeding in the form of:

(A) a statement that the person is personally known to the online notary public;

(B) a notation of the type of identification document provided to the online notary public;

(C) a record of the identity verification made under Section 406.110, if applicable; or

(D) the following:

(i) the printed name and address of each credible witness swearing to or affirming the person’s identity; and

(ii) for each credible witness not personally known to the online notary public, a description of the type of identification documents provided to the online notary public;

(6) a recording of any video and audio conference that is the basis for satisfactory evidence of identity and a notation of the type of identification presented as evidence; and

(7) the fee, if any, charged for the notarization.

(b) – (c) [No change]

(d) For documents that are tangible instruments, an online notary public shall keep a record of the documents notarized by the online notary public with a tangible symbol. The record for each online notarization with a tangible symbol must contain the same elements required by Subsection (a) for an electronic record.

Amended by Acts 2023, 88th Legislature, Ch. 258 (SB 1780), effective January 1, 2024.

Sec. 406.109. USE OF ELECTRONIC RECORD, SIGNATURE, AND SEAL.

(a) – (e) [No change]

(f) An online notary public shall authenticate all online notarizations with the online notary public’s:

(1) electronic seal, if the online notarization was performed with respect to an electronic document;
or

(2) seal of office as provided under Section 406.013, if the online notarization was performed with respect to a tangible document.

Added by Acts 2023, 88th Legislature, Ch. 258 (SB 1780), effective January 1, 2024.

Sec. 406.110. ONLINE NOTARIZATION PROCEDURES GENERALLY.

(a) [No change]

(b) In performing an online notarization, an online

notary public shall verify the identity of a person signing a document [~~creating an electronic signature~~] at the time of the online notarization [~~that the signature is taken~~] by using two-way video and audio conference technology that meets the requirements of this subchapter and rules adopted under this subchapter. Identity shall [~~may~~] be verified by:

(1) the online notary public’s personal knowledge of the person signing a document [~~creating the electronic signature~~]; or

(2) each of the following:

(A) remote presentation by the person signing a document [~~creating the electronic signature~~] of a government-issued identification credential, including a passport or driver’s license, that contains the signature and a photograph of the person;

(B) credential analysis of the credential described by Paragraph (A); and

(C) identity proofing of the person described by Paragraph (A).

(c) [No change]

(d) The [~~electronic~~] notarial certificate for an online notarization must include a notation that the notarization is an online notarization and must indicate if the signature was a tangible symbol or an electronic signature.

Amended by Acts 2023, 88th Legislature, Ch. 258 (SB 1780), effective January 1, 2024.

Sec. 406.1103. ONLINE NOTARIZATION PROCEDURES FOR TANGIBLE DOCUMENTS.

(a) In performing an online notarization in which the principal signs with a tangible symbol and not an electronic signature, an online notary public shall reasonably confirm that a document before the online notary public is the same document in which the principal made a statement or on which the principal executed a signature.

(b) An online notary public satisfies the requirement of Subsection (a) to take an acknowledgment of a signature on a tangible document if:

(1) during a video and audio recording described by Section 406.108(a)(6):

(A) the acknowledgment is displayed to and identified by the principal; and

(B) the principal signs the document and a declaration in substantially the following form that is a part of or securely attached to the document:

“I declare under penalty of perjury that the document of which this declaration is a part or to which it is attached is the same document on which (name of online notary public), an online notary public, performed an online notarization and before whom I appeared by means of two-way video and audio conference technology on (date).

(Signature of principal)

(Printed name of principal);”

(2) the principal sends the document and declaration to the online notary public not later than the third day after the date the online notarization was performed; and

(3) the online notary public:

(A) in the video and audio recording under Subdivision (1), records the principal signing the document and declaration;

(B) receives the document and declaration sent by the principal under Subdivision (2) not later than the 10th day after the date the online notarization was performed; and

(C) after receipt of the document and declaration from the principal, executes a notarial certificate that includes a statement in substantially the following form:

“I, (name of online notary public), witnessed, by means of video and audio conference technology, (name of principal) sign the attached document and declaration on (date).”

(c) An online notarization performed in compliance with Subsection (b) complies with any requirement regarding the execution of a notarial certificate and is effective on the date the principal signed the declaration under Subsection (b)(1)(B).

(d) A notarial certificate executed in the form described by Subsection (b)(3)(C) may be relied on as conclusive evidence of compliance with Subsections (b)(2) and (b)(3)(B).

(e) Subsection (b) does not preclude use of another procedure to satisfy Subsection (a) for an online notarization performed with respect to a tangible document.

Added by Acts 2023, 88th Legislature, Ch. 258 (SB 1780), effective January 1, 2024.

Sec. 406.1107. ONLINE NOTARIZATION PROCEDURES FOR OATHS OR AFFIRMATIONS.

An online notary public may administer an oath or affirmation to a principal as an online notarization if, except as otherwise provided by other law of this state, the online notary public:

(1) identifies the principal under Section 406.110(b);

(2) creates or causes the creation under Section 406.108 of a video and audio recording of the principal taking the oath or affirmation; and

(3) retains or causes the retention under Section 406.108 of the recording.

Added by Acts 2023, 88th Legislature, Ch. 258 (SB 1780), effective January 1, 2024.

HEALTH AND SAFETY CODE**CHAPTER 54. LIVING ORGAN DONOR EDUCATION PROGRAM****Sec. 54.001. ESTABLISHMENT OF PROGRAM.**

The department shall establish a living organ donor education program to educate residents of this state about:

(1) the need for living organ donors, including the particular need for donors from minority populations;

(2) the partnership between the Glenda Dawson Donate Life Texas Registry for deceased organ donation, maintained by Donate Life Texas, and other organ donor registries for living organ donation;

(3) the requirements for registering as a potential living organ donor;

(4) the medical screening and procedures necessary for an individual to be a living organ donor; and

(5) the availability of information about living organ donation in health care facilities, transplant centers, organ procurement organizations, tissue banks, eye banks, and driver's license offices.

Added by Acts 2023, 88th Legislature, Ch. 88 (SB 1249), effective September 1, 2023. Sec. 2 of SB 1249 provides: "As soon as practicable after the effective date of this Act, the Department of State Health Services shall establish the program and obtain the informational materials as required by Chapter 54, Health and Safety Code, as added by this Act."

Sec. 54.002. INFORMATIONAL MATERIALS.

(a) The department, in consultation with Donate

Life Texas, shall develop written and electronic informational materials, including links to Internet websites and machine-readable codes, regarding:

(1) living organ donation; and

(2) the process of registering with a living donor registry.

(b) Donate Life Texas may develop and provide the informational materials described by Subsection (a) to the department.

(c) The department and the Department of Public Safety shall post the information described by Subsection (a) on each of the agency's Internet websites.

(d) Appropriate health care facilities, transplant centers, organ procurement organizations, tissue banks, eye banks, and driver's license offices may access the informational materials described by Subsection (a) on the Internet websites of the department and the Department of Public Safety and print the materials to place in their facilities or offices to provide to residents of this state.

Added by Acts 2023, 88th Legislature, Ch. 88 (SB 1249), effective September 1, 2023. See transitional note following Sec. 54.001.

Sec. 166.0445. LIMITATION ON LIABILITY FOR PERFORMING CERTAIN MEDICAL PROCEDURES.

(a) A physician or a health care professional acting under the direction of a physician is not subject to civil liability for participating in a medical procedure performed under Section 166.046(d-2).

(b) A physician or a health care professional acting under the direction of a physician is not subject to criminal liability for participating in a medical procedure performed under Section 166.046(d-2) unless:

(1) the physician or health care professional in participating in the medical procedure acted with a specific malicious intent to cause the death of the patient and that conduct significantly hastened the patient's death; and

(2) the hastening of the patient's death is not attributable to the risks associated with the medical procedure.

(c) A physician or a health care professional acting under the direction of a physician has not engaged in unprofessional conduct by participating in a medical procedure performed under Section 166.046(d-2) unless the physician or health care professional in participating in the medical procedure acted with a specific malicious intent to harm the patient.

Added by Acts 2023, 88th Legislature, Ch. 915 (HB 3162), effective September 1, 2023. Sec. 13 of HB 3162 provides: "Chapter 166, Health and Safety Code, as amended by this Act, applies only to a review, consultation, disagreement, or other action relating to a health care or treatment decision made on or after the effective date of this Act. A review, consultation, disagreement, or other action relating to a health care or treatment decision made before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose."

Sec. 166.046. PROCEDURE IF NOT EFFECTUATING [A] DIRECTIVE OR TREATMENT DECISION FOR CERTAIN PATIENTS.

(a) This section applies only to health care and treatment for a patient who is determined to be incompetent or is otherwise mentally or physically incapable of communication.

(a-1) If an attending physician refuses to honor an [a patient's] advance directive of or [a] health care or treatment decision made by or on behalf of a patient to whom this section applies, the physician's refusal shall be reviewed by an ethics or medical committee. The attending physician may not be a member of that committee during the review. The patient shall be given life-sustaining treatment during the review.

(a-2) An ethics or medical committee that reviews a physician's refusal to honor an advance directive or health care or treatment decision under Subsection (a-1) shall consider the patient's well-being in conducting the review but may not make any judgment on the patient's quality of life. For purposes of this section, a decision by the committee based on any of the considerations described by Subdivisions (1) through (5) is not a judgment on the patient's quality of life. If the review requires the committee to determine whether life-sustaining treatment requested in the patient's advance directive or by the person responsible for the patient's health care decisions is medically inappropriate, the committee shall consider whether provision of the life-sustaining treatment:

(1) will prolong the natural process of dying or hasten the patient's death;

(2) will result in substantial, irremediable, and objectively measurable physical pain that is not outweighed by the benefit of providing the treatment;

(3) is medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems not outweighed by the benefit of providing the treatment;

(4) is consistent with the prevailing standard of care; or

(5) is contrary to the patient's clearly documented desires.

(b) The [patient or the] person responsible for the patient's health care decisions [of the individual who has made the decision regarding the directive or treatment decision]:

(1) [may be given a written description of the ethics or medical committee review process and any other policies and procedures related to this section adopted by the health care facility;

[2] shall be informed in writing [of the committee review process] not less than seven calendar days [48 hours] before the meeting called to discuss the patient's directive, unless the [time] period is waived by written mutual agreement, of:

(A) the ethics or medical committee review process and any other related policies and procedures adopted by the health care facility, including any policy described by Subsection (b-1);

(B) the rights described in Subdivisions (3)(A)-(D);

(C) the date, time, and location of the meeting;

(D) the work contact information of the facility's personnel who, in the event of a disagreement, will be responsible for overseeing the reasonable effort to transfer the patient to another physician or facility willing to comply with the directive;

(E) the factors the committee is required to consider under Subsection (a-2); and

(F) the language in Section 166.0465;

(2) [(3)] at the time of being [sø] informed under Subdivision (1), shall be provided:

(A) a copy of the appropriate statement set forth in Section 166.052; and

(B) a copy of the registry list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer or to assist in locating a provider willing to accept transfer that is posted on the website maintained by the department under Section 166.053; and

(3) [(4)] is entitled to:

(A) attend and participate in the meeting as scheduled by the committee;

(B) receive during the meeting a written statement of the first name, first initial of the last name,

and title of each committee member who will participate in the meeting;

(C) subject to Subsection (b-1):

(i) be accompanied at the meeting by the patient's spouse, parents, adult children, and not more than four additional individuals, including legal counsel, a physician, a health care professional, or a patient advocate, selected by the person responsible for the patient's health care decisions; and

(ii) have an opportunity during the open portion of the meeting to either directly or through another individual attending the meeting:

(a) explain the justification for the health care or treatment request made by or on behalf of the patient;

(b) respond to information relating to the patient that is submitted or presented during the open portion of the meeting; and

(c) state any concerns of the person responsible for the patient's health care decisions regarding compliance with this section or Section 166.0465, including stating an opinion that one or more of the patient's disabilities are not relevant to the committee's determination of whether the medical or surgical intervention is medically appropriate;

(D) receive a written notice [explanation] of:

(i) the decision reached during the review process accompanied by an explanation of the decision, including, if applicable, the committee's reasoning for affirming that requested life-sustaining treatment is medically inappropriate;

(ii) the patient's major medical conditions as identified by the committee, including any disability of the patient considered by the committee in reaching the decision, except the notice is not required to specify whether any medical condition qualifies as a disability;

(iii) a statement that the committee has complied with Subsection (a-2) and Section 166.0465; and

(iv) the health care facilities contacted before the meeting as part of the transfer efforts under Subsection (d) and, for each listed facility that denied the request to transfer the patient and provided a reason for the denial, the provided reason;

(E) [(C)] receive a copy of or electronic access to the portion of the patient's medical record related to the treatment received by the patient in the facility for [the lesser of:

[(+) the period of the patient's current admission to the facility; [or

[(ii) the preceding 30 calendar days;] and

(F) [(D)] receive a copy of or electronic access to all of the patient's reasonably available diagnostic results and reports related to the medical record provided under Paragraph (E) [(C)].

(b-1) A health care facility may adopt and implement a written policy for meetings held under this section that is reasonable and necessary to:

(1) facilitate information sharing and discussion of the patient's medical status and treatment requirements, including provisions related to attendance, confidentiality, and timing regarding any agenda item; and

(2) preserve the effectiveness of the meeting, including provisions disclosing that the meeting is not a legal proceeding and the committee will enter into an executive session for deliberations.

(b-2) Notwithstanding Subsection (b)(3), the following individuals may not attend or participate in the executive session of an ethics or medical committee under this section:

(1) the physicians or health care professionals providing health care and treatment to the patient; or

(2) the person responsible for the patient's health care decisions or any person attending the meeting under Subsection (b)(3)(C)(i).

(b-3) If the health care facility or person responsible for the patient's health care decisions intends to have legal counsel attend the meeting of the ethics or medical committee, the facility or person, as applicable, shall make a good faith effort to provide written notice of that intention not less than 48 hours before the meeting begins.

(c) The written notice [explanation] required by Subsection (b)(3)(D)(i) [Subsection (b)(4)(B)] must be included in the patient's medical record.

(d) After written notice is provided under Subsection (b)(1), [If] the patient's attending physician [; the patient, or the person responsible for the health care decisions of the individual does not agree with the decision reached during the review process under Subsection (b), the physician] shall make a reasonable effort to transfer the patient to a physician who is willing to comply with the directive. The health care [If the patient is a patient in a health care facility, the] facility's personnel shall assist the physician in arranging the patient's transfer to:

- (1) another physician;
- (2) an alternative care setting within that facility; or
- (3) another facility.

(d-1) If another health care facility denies the patient's transfer request, the personnel of the health care facility assisting with the patient's transfer efforts under Subsection (d) shall make a good faith effort to inquire whether the facility that denied the patient's transfer request would be more likely to approve the transfer request if a medical procedure, as that term is defined in this section, is performed on the patient.

(d-2) If the patient's advance directive or the person responsible for the patient's health care decisions is requesting life-sustaining treatment that the attending physician has decided and the ethics or medical committee has affirmed is medically inappropriate:

(1) the attending physician or another physician responsible for the care of the patient shall perform on the patient each medical procedure that satisfies all of the following conditions:

(A) in the attending physician's judgment, the medical procedure is reasonable and necessary to help effect the patient's transfer under Subsection (d);

(B) an authorized representative for another health care facility with the ability to comply with the patient's advance directive or the health care or treatment decision made by or on behalf of the patient has expressed to the personnel described by Subsection (b)(1)(D) or the attending physician that the facility is more likely to accept the patient's transfer to the other facility if the medical procedure is performed on the patient;

(C) in the medical judgment of the physician who would perform the medical procedure, performing the medical procedure is:

(i) within the prevailing standard of medical care; and

(ii) not medically contraindicated or medically inappropriate under the circumstances;

(D) in the medical judgment of the physician who would perform the medical procedure, the physician has the training and experience to perform the medical procedure;

(E) the physician who would perform the medical procedure has medical privileges at the facility where the patient is receiving care authorizing the physician to perform the medical procedure at the facility;

(F) the facility where the patient is receiving care has determined the facility has the resources for the performance of the medical procedure at the facility; and

(G) the person responsible for the patient's health care decisions provides consent on behalf of the patient for the medical procedure; and

(2) the person responsible for the patient's health care decisions is entitled to receive:

(A) a delay notice:

(i) if, at the time the written decision is provided as required by Subsection (b)(3)(D)(i), a medical procedure satisfies all of the conditions described by Subdivision (1); or

(ii) if:

(a) at the time the written decision is provided as required by Subsection (b)(3)(D)(i), a medical procedure satisfies all of the conditions described by Subdivision (1) except Subdivision (1)(G); and

(b) the person responsible for the patient's health care decisions provides to the attending physician or another physician or health care professional providing direct care to the patient consent on behalf of the patient for the medical procedure within 24 hours of the request for consent;

(B) a start notice:

(i) if, at the time the written decision is provided as required by Subsection (b)(3)(D)(i), no medical procedure satisfies all of the conditions described by Subdivisions (1)(A) through (F); or

(ii) if:

(a) at the time the written decision is provided as required by Subsection (b)(3)(D)(i), a medical procedure satisfies all of the conditions described by Subdivision (1) except Subdivision (1)(G); and

(b) the person responsible for the patient's health care decisions does not provide to the attending physician or another physician or health care professional providing direct care to the patient consent on behalf of the patient for the medical procedure within 24 hours of the request for consent; and

(C) a start notice accompanied by a statement that one or more of the conditions described by Subdivisions (1)(A) through (G) are no longer satisfied if, after a delay notice is provided in accordance with Subdivision (2)(A) and before the medical procedure on which the delay notice is based is

performed on the patient, one or more of those conditions are no longer satisfied.

(d-3) After the 25-day period described by Subsection (e) begins, the period may not be suspended or stopped for any reason. This subsection does not limit or affect a court’s ability to order an extension of the period in accordance with Subsection (g). Subsection (d-2) does not require a medical procedure to be performed on the patient after the expiration of the 25-day period.

(e) If the patient’s advance directive [patient] or the person responsible for the patient’s health care decisions [of the patient] is requesting life-sustaining treatment that the attending physician has decided and the ethics or medical committee has affirmed is medically inappropriate treatment, the patient shall be given available life-sustaining treatment pending transfer under Subsection (d). This subsection does not authorize withholding or withdrawing pain management medication, medical interventions [procedures] necessary to provide comfort, or any other health care provided to alleviate a patient’s pain. The patient is responsible for any costs incurred in transferring the patient to another health care facility. The attending physician, any other physician responsible for the care of the patient, and the health care facility are not obligated to provide life-sustaining treatment after the 25th calendar [10th] day after a start notice is [both the written decision and the patient’s medical record required under Subsection (b) are] provided in accordance with Subsection (d-2)(2)(B) or (C) to [the patient or] the person responsible for the patient’s health care decisions or a medical procedure for which a delay notice was provided in accordance with Subsection (d-2)(2)(A) is performed, whichever occurs first, [of the patient] unless ordered to extend the 25-day period [do so] under Subsection (g), except that artificially administered nutrition and hydration must be provided unless, based on reasonable medical judgment, providing artificially administered nutrition and hydration would:

- (1) hasten the patient’s death;
- (2) be medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems not outweighed by the benefit of providing [the provision of] the treatment;
- (3) result in substantial, irremediable, and objectively measurable physical pain not outweighed by the benefit of providing [the provision of] the treatment;
- (4) be medically ineffective in prolonging life;
- or
- (5) be contrary to the patient’s or surrogate’s

clearly documented desire not to receive artificially administered nutrition or hydration.

(e-1) [No change]

(g) At the request of [~~the patient or~~] the person responsible for the patient’s health care decisions [of the patient], the appropriate district or county court shall extend the [~~time~~] period provided under Subsection (e) only if the court finds, by a preponderance of the evidence, that there is a reasonable expectation that a physician or health care facility that will honor the patient’s directive will be found if the time extension is granted.

(h) [No change]

(i) In this section:

(1) ”Delay notice” means a written notice that the first day of the 25-day period provided under Subsection (e), after which life-sustaining treatment may be withheld or withdrawn unless a court has granted an extension under Subsection (g), will be delayed until the calendar day after a medical procedure required by Subsection (d-2)(1) is performed unless, before the medical procedure is performed, the person receives written notice of an earlier first day because one or more conditions described by that subdivision are no longer satisfied.

(2) ”Medical procedure” means only a tracheostomy or a percutaneous endoscopic gastrostomy.

(3) ”Start notice” means a written notice that the 25-day period provided under Subsection (e), after which life-sustaining treatment may be withheld or withdrawn unless a court has granted an extension under Subsection (g), will begin on the first calendar day after the date the notice is provided.

Amended by Acts 2023, 88th Legislature, Ch. 915 (HB 3162), effective September 1, 2023. See transitional note following Sec. 166.0445.

Sec. 166.0465. ETHICS OR MEDICAL COMMITTEE DECISION RELATED TO PATIENT DISABILITY.

(a) In this section, “disability” has the meaning assigned by the Americans with Disabilities Act of 1990 in 42 U.S.C. Section 12102.

(b) During the review process under Section 166.046(b), the ethics or medical committee may not consider a patient’s disability that existed before the patient’s current admission unless the disability is relevant in determining whether the medical or surgical intervention is medically appropriate.

Added by Acts 2023, 88th Legislature, Ch. 915 (HB 3162), effective September 1, 2023. See transitional note following Sec. 166.0445.

Sec. 166.052. STATEMENTS EXPLAINING PATIENT'S RIGHT TO TRANSFER.

(a) In cases in which the attending physician refuses to honor an advance directive or health care or treatment decision requesting the provision of life-sustaining treatment for a patient who is determined to be incompetent or is otherwise mentally or physically incapable of communication, the statement required by Section 166.046(b)(2)(A) [~~166.046(b)(3)(A)~~] shall be in substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician Recommends Against Certain Life-Sustaining Treatment That You Wish To Continue

You have been given this information because the patient has requested through an advance directive or you have requested on behalf of the patient that life-sustaining treatment* be provided to [~~for yourself as the patient or on behalf of~~] the patient, [~~as applicable,~~] which the attending physician believes is not medically appropriate. This information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166, Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for life-sustaining treatment for a patient who is determined to be incompetent or is otherwise mentally or physically incapable of communication because of the physician's judgment that the treatment would be medically inappropriate, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least seven calendar days [~~48 hours~~] before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than seven calendar days [~~48 hours~~], if possible.

You are entitled to receive a written explanation of the decision reached during the review process.

If after this review process both the attending physician and the ethics or medical committee conclude that life-sustaining treatment is medically inappropriate

and yet you continue to request such treatment, then the following procedure will occur:

1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to provide the requested treatment.

2. You are being given a list of health care providers, licensed physicians, health care facilities, and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Department of State Health Services. You may wish to contact providers, facilities, or referral groups on the list or others of your choice to get help in arranging a transfer.

3. The patient will continue to be given life-sustaining treatment until the patient can be transferred to a willing provider for up to 25 calendar [~~10~~] days from the time you were given a written notice of the first day of the 25-day period or a medical procedure is performed that delayed the 25-day period and for which you received notice, whichever occurs first [~~both the committee's written decision that life-sustaining treatment is not appropriate and the patient's medical record~~]. The patient will continue to be given after the 25-day [~~10-day~~] period treatment to enhance pain management and reduce suffering, including artificially administered nutrition and hydration, unless, based on reasonable medical judgment, providing artificially administered nutrition and hydration would hasten the patient's death, be medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems not outweighed by the benefit of the provision of the treatment, result in substantial irremediable physical pain not outweighed by the benefit of the provision of the treatment, be medically ineffective in prolonging life, or be contrary to the patient's or surrogate's clearly documented desires.

4. If a transfer can be arranged, the patient will be responsible for the costs of the transfer.

5. If a provider cannot be found willing to give the requested treatment within 25 calendar [~~10~~] days, life-sustaining treatment may be withdrawn unless a court of law has granted an extension.

6. You may ask the appropriate district or county court to extend the 25-day [~~the 10-day~~] period if the court finds that there is a reasonable expectation that you may find a physician or health care facility willing to provide life-sustaining treatment if the extension is granted. Patient medical records will be provided to the patient or surrogate in accordance with Section 241.154, Texas Health and Safety Code.

*"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificially administered nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(b) In cases in which the attending physician refuses to comply with an advance directive or a health care or treatment decision requesting the withholding or withdrawal of life-sustaining treatment for a patient who is determined to be incompetent or is otherwise mentally or physically incapable of communication, the statement required by Section 166.046(b)(2)(A) [166.046(b)(3)(A)] shall be in substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician Recommends Life-Sustaining Treatment That You Wish To Stop

You have been given this information because the patient has requested through an advance directive or you have requested on behalf of the patient that [the withdrawal or withholding of] life-sustaining treatment* be withdrawn or withheld from [for yourself as the patient or on behalf of] the patient, [as applicable,] and the attending physician disagrees with and refuses to comply with that request. The information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166, Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for withdrawal or withholding of life-sustaining treatment for any reason, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least seven calendar days [48 hours] before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than seven calendar days [48 hours], if possible.

You are entitled to receive a written explanation of

the decision reached during the review process.

If you or the attending physician do not agree with the decision reached during the review process, and the attending physician still refuses to comply with your request to withhold or withdraw life-sustaining treatment, then the following procedure will occur:

1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to withdraw or withhold the life-sustaining treatment.

2. You are being given a list of health care providers, licensed physicians, health care facilities, and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Department of State Health Services. You may wish to contact providers, facilities, or referral groups on the list or others of your choice to get help in arranging a transfer.

*"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificially administered nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(c) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 915 (HB 3162), effective September 1, 2023. See transitional note following Sec. 166.0445.

Sec. 166.054. REPORTING REQUIREMENTS REGARDING ETHICS OR MEDICAL COMMITTEE PROCESSES.

(a) Not later than the 180th day after the date written notice is provided under Section 166.046(b)(1), a health care facility shall prepare and submit to the commission a report that contains the following information:

(1) the number of days that elapsed from the patient's admission to the facility to the date notice was provided under Section 166.046(b)(1);

(2) whether the ethics or medical committee met to review the case under Section 166.046 and, if the committee did meet, the number of days that elapsed from the date notice was provided under Section 166.046(b)(1) to the date the meeting was held;

(3) whether the patient was:

(A) transferred to a physician within the same facility who was willing to comply with the patient's advance directive or a health care or treatment decision made by or on behalf of the patient;

(B) transferred to a different health care facility; or

(C) discharged from the facility to a private residence or other setting that is not a health care facility;

(4) whether the patient died while receiving life-sustaining treatment at the facility;

(5) whether life-sustaining treatment was withheld or withdrawn from the patient at the facility after expiration of the time period described by Section 166.046(e) and, if so, the disposition of the patient after the withholding or withdrawal of life-sustaining treatment at the facility, as selected from the following categories:

(A) the patient died at the facility;

(B) the patient is currently a patient at the facility;

(C) the patient was transferred to a different health care facility; or

(D) the patient was discharged from the facility to a private residence or other setting that is not a health care facility;

(6) the age group of the patient selected from the following categories:

(A) 17 years of age or younger;

(B) 18 years of age or older and younger than 66 years of age; or

(C) 66 years of age or older;

(7) the health insurance coverage status of the patient selected from the following categories:

(A) private health insurance coverage;

(B) public health plan coverage; or

(C) uninsured;

(8) the patient's sex;

(9) the patient's race;

(10) whether the facility was notified of and able to reasonably verify any public disclosure of the contact information for the facility's personnel, physicians or health care professionals who provide care at the facility, or members of the ethics or medical committee in connection with the patient's stay at the facility; and

(11) whether the facility was notified of and able to reasonably verify any public disclosure by facility personnel of the contact information for the patient's immediate family members or the person responsible for the patient's health care decisions in connection with the patient's stay at the facility.

(b) The commission shall ensure information provided in each report submitted by a health care facility under Subsection (a) is kept confidential and not disclosed in any manner, except as provided by this section.

(c) Not later than April 1 of each year, the commission shall prepare and publish on the commission's Internet website a report that contains:

(1) aggregate information compiled from the reports submitted to the commission under Subsection (a) during the preceding year on:

(A) the total number of written notices provided under Section 166.046(b)(1);

(B) the average number of days described by Subsection (a)(1);

(C) the total number of meetings held by ethics or medical committees to review cases under Section 166.046;

(D) the average number of days described by Subsection (a)(2);

(E) the total number of patients described by Subsections (a)(3)(A), (B), and (C);

(F) the total number of patients described by Subsection (a)(4);

(G) the total number of patients for whom life-sustaining treatment was withheld or withdrawn after expiration of the time period described by Section 166.046(e);

(H) the total number of cases for which the facility was notified of and able to reasonably verify the public disclosure of the contact information for the facility's personnel, physicians or health care professionals who provide care at the facility, or members of the ethics or medical committee in connection with the patient's stay at the facility; and

(I) the total number of cases for which the facility was notified of and able to reasonably verify the public disclosure by facility personnel of contact information for the patient's immediate family members or person responsible for the patient's health care decisions in connection with the patient's stay at the facility; and

(2) if the total number of reports submitted

under Subsection (a) for the preceding year is 10 or more, aggregate information compiled from those reports on the total number of patients categorized by:

(A) sex;

(B) race;

(C) age group, based on the categories described by Subsection (a)(6);

(D) health insurance coverage status, based on the categories described by Subsection (a)(7); and

(E) for patients for whom life-sustaining treatment was withheld or withdrawn at the facility after expiration of the period described by Section 166.046(e), the total number of patients described by each of the following:

(i) Subsection (a)(5)(A);

(ii) Subsection (a)(5)(B);

(iii) Subsection (a)(5)(C); and

(iv) Subsection (a)(5)(D).

(d) If the commission receives fewer than 10 reports under Subsection (a) for inclusion in an annual report required under Subsection (c), the commission shall include in the next annual report prepared after the commission receives 10 or more reports the aggregate information for all years for which the information was not included in a preceding annual report. The commission shall include in the next annual report a statement that identifies each year during which an underlying report was submitted to the commission under Subsection (a).

(e) The annual report required by Subsection (c) or (d) may not include any information that could be used alone or in combination with other reasonably available information to identify any individual, entity, or facility.

(f) The executive commissioner shall adopt rules to:

(1) establish a standard form for the reporting requirements of this section; and

(2) protect and aggregate any information the commission receives under this section.

(g) Information collected as required by this section or submitted to the commission under this section:

(1) is not admissible in a civil or criminal proceeding in which a physician, health care professional acting under the direction of a physician, or health care facility is a defendant;

(2) may not be used in relation to any disciplinary action by a licensing or regulatory agency with oversight over a physician, health care professional

acting under the direction of a physician, or health care facility; and

(3) is not public information or subject to disclosure under Chapter 552, Government Code, except as permitted by Section 552.008, Government Code.

Added by Acts 2023, 88th Legislature, Ch. 915 (HB 3162), effective September 1, 2023.

Sec. 166.203. GENERAL PROCEDURES AND REQUIREMENTS FOR DO-NOT-RESUSCITATE ORDERS.

(a) A DNR order issued for a patient is valid only if [the patient's attending physician issues the order,] the order is dated[;] and [the order]:

(1) is issued by a physician providing direct care to the patient in compliance with:

(A) the written and dated directions of a patient who was competent at the time the patient wrote the directions;

(B) the oral directions of a competent patient delivered to or observed by two competent adult witnesses, at least one of whom must be a person not listed under Section 166.003(2)(E) or (F);

(C) the directions in an advance directive enforceable under Section 166.005 or executed in accordance with Section 166.032, 166.034, [ø] 166.035, 166.082, 166.084, or 166.085;

(D) the directions of a patient's:

(i) legal guardian;

(ii) [ø] agent under a medical power of attorney acting in accordance with Subchapter D; or

(iii) proxy as designated and authorized by a directive executed in accordance with Subchapter B to make a treatment decision for the patient if the patient becomes incompetent or otherwise mentally or physically incapable of communication; or

(E) a treatment decision made in accordance with Section 166.039; [ø]

(2) is issued by the patient's attending physician and:

(A) the order is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions; and

(B) [;] in the reasonable medical judgment of the patient's attending physician:

(i) [(A)] the patient's death is imminent, within minutes to hours, regardless of the provision of cardiopulmonary resuscitation; and

(ii) [(B)] the DNR order is medically appropriate; or

(3) is issued by the patient's attending physician:

(A) for a patient who is incompetent or otherwise mentally or physically incapable of communication; and

(B) in compliance with a decision:

(i) agreed on by the attending physician and the person responsible for the patient's health care decisions; and

(ii) concurred in by another physician who is not involved in the direct treatment of the patient or who is a representative of an ethics or medical committee of the health care facility in which the person is a patient.

(b) The DNR order takes effect at the time the order is issued, provided the order is placed in the patient's medical record as soon as practicable and may be issued and entered in a format acceptable under the policies of the health care facility or hospital.

(c) Unless notice is provided in accordance with Section 166.204(a), before [Before] placing in a patient's medical record a DNR order issued under Subsection (a)(2), a [the] physician, physician assistant, nurse, or other person acting on behalf of a health care facility or hospital shall:

(1) inform the patient of the order's issuance; or

(2) if the patient is incompetent, make a reasonably diligent effort to contact or cause to be contacted and inform of the order's issuance:

(A) the patient's known agent under a medical power of attorney or legal guardian; or

(B) for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Section 166.039(b)(1), (2), or (3).

(d) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 915 (HB 3162), effective September 1, 2023. See transitional note following Sec. 166.0445.

Sec. 166.204. NOTICE REQUIREMENTS FOR DO-NOT-RESUSCITATE ORDERS.

(a) If an individual arrives at a health care facility or hospital that is treating a patient for whom a DNR order is issued under Section 166.203(a)(2) and the individual notifies a physician, physician assistant, or nurse providing direct care to the patient of the

individual's arrival, the physician, physician assistant, or nurse who has actual knowledge of the order shall, unless notice has been provided in accordance with Section 166.203(c), disclose the order to the individual, provided the individual is:

(1) the patient's known agent under a medical power of attorney or legal guardian; or

(2) for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Section 166.039(b)(1), (2), or (3).

(a-1) For a patient who was incompetent at the time notice otherwise would have been provided to the patient under Section 166.203(c)(1) and if a physician providing direct care to the patient later determines that, based on the physician's reasonable medical judgment, the patient has become competent, a physician, physician assistant, or nurse providing direct care to the patient shall disclose the order to the patient, provided that the physician, physician assistant, or nurse has actual knowledge:

(1) of the order; and

(2) that a physician providing direct care to the patient has determined that the patient has become competent.

(b) Failure to comply with Subsection (a) or (a-1) or Section 166.203(c) does not affect the validity of a DNR order issued under this subchapter.

(c) Any person, including a health care facility or hospital, ~~[who makes a good faith effort to comply with Subsection (a) of this section or Section 166.203(c) and contemporaneously records the person's effort to comply with Subsection (a) of this section or Section 166.203(c) in the patient's medical record]~~ is not civilly or criminally liable or subject to disciplinary action from the appropriate licensing authority for any act or omission related to providing notice under Subsection (a) or (a-1) of this section or Section 166.203(c) if the person:

(1) makes a good faith effort to comply with Subsection (a) or (a-1) or Section 166.203(c) and contemporaneously records in the patient's medical record the person's effort to comply with those provisions; or

(2) makes a good faith determination that the circumstances that would require the person to perform an act under Subsection (a) or (a-1) or Section 166.203(c) are not met.

(d) – (e) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 915 (HB 3162), effective September 1, 2023. See transitional note following Sec. 166.0445.

Sec. 166.205. REVOCATION OF DO-NOT-RESUSCITATE ORDER; LIMITATION OF LIABILITY.

(a) A physician providing direct care to a patient for whom a DNR order is issued shall revoke the patient's DNR order if ~~[the patient or, as applicable, the patient's agent under a medical power of attorney or the patient's legal guardian if the patient is incompetent]:~~

(1) an advance directive that serves as the basis of the DNR order is properly revoked in accordance with this chapter; [effectively revokes an advance directive, in accordance with Section 166.042, for which a DNR order is issued under Section 166.203(a); or]

(2) the patient expresses to any person providing direct care to the patient a revocation of consent to or intent to revoke a DNR order issued under Section 166.203(a); or

(3) the DNR order was issued under Section 166.203(a)(1)(D) or (E) or Section 166.203(a)(3), and the person responsible for the patient's health care decisions expresses to any person providing direct care to the patient a revocation of consent to or intent to revoke the DNR order.

(b) A person providing direct care to a patient under the supervision of a physician shall notify the physician of the request to revoke a DNR order or of the revocation of an advance directive under Subsection (a).

(c) A patient's attending physician may at any time revoke a DNR order issued under:

(1) Section 166.203(a)(1)(A), (B), or (C), provided that:

(A) the order is for a patient who is incompetent or otherwise mentally or physically incapable of communication; and

(B) the decision to revoke the order is:

(i) agreed on by the attending physician and the person responsible for the patient's health care decisions; and

(ii) concurred in by another physician who is not involved in the direct treatment of the patient or who is a representative of an ethics or medical committee of the health care facility in which the person is a patient;

(2) Section 166.203(a)(1)(E), provided that the order's issuance was based on a treatment decision made in accordance with Section 166.039(e);

(3) Section 166.203(a)(2); or

(4) Section 166.203(a)(3).

(c-1) A patient's attending physician shall revoke a DNR order issued for the patient under Section 166.203(a)(2) if, in the attending physician's reasonable medical judgment, the condition described by Section 166.203(a)(2)(B)(i) is no longer satisfied.

(d) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 915 (HB 3162), effective September 1, 2023. See transitional note following Sec. 166.0445.

Sec. 166.206. PROCEDURE FOR FAILURE TO EXECUTE DO-NOT-RESUSCITATE ORDER OR PATIENT INSTRUCTIONS.

(a) If a ~~[an attending]~~ physician, health care facility, or hospital does not wish to execute or comply with a DNR order or the patient's instructions concerning the provision of cardiopulmonary resuscitation, the physician, facility, or hospital shall inform the patient, the legal guardian or qualified relatives of the patient, or the agent of the patient under a medical power of attorney of the benefits and burdens of cardiopulmonary resuscitation.

(b) If, after receiving notice under Subsection (a), the patient or another person authorized to act on behalf of the patient and the ~~[attending]~~ physician, health care facility, or hospital remain in disagreement, the physician, facility, or hospital shall make a reasonable effort to transfer the patient to another physician, facility, or hospital willing to execute or comply with a DNR order or the patient's instructions concerning the provision of cardiopulmonary resuscitation.

(c) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 915 (HB 3162), effective September 1, 2023. See transitional note following Sec. 166.0445.

Sec. 166.209. ENFORCEMENT.

(a) Subject to Sections 166.205(d), 166.207, and 166.208 and Subsection (c), a [A] physician, physician assistant, nurse, or other person commits an offense if, with the specific intent to violate this subchapter, the person intentionally:

(1) conceals, cancels, effectuates, or falsifies another person's DNR order in violation of this subchapter; or

(2) [if the person intentionally] conceals or withholds personal knowledge of another person's revocation of a DNR order in violation of this subchapter.

(a-1) An offense under Subsection (a) [~~this subsection~~] is a Class A misdemeanor. This section [~~subsection~~] does not preclude prosecution for any other applicable offense.

(b) Subject to Sections 166.205(d), 166.207, and 166.208, a [A] physician, health care professional, health care facility, hospital, or entity is subject to review and disciplinary action by the appropriate licensing authority for intentionally:

(1) failing to effectuate a DNR order in violation of this subchapter; or

(2) issuing a DNR order in violation of this subchapter.

(c) Subsection (a) does not apply to a person whose act or omission was based on a reasonable belief that the act or omission was in compliance with the wishes of the patient or the person responsible for the patient's health care decisions.

Amended by Acts 2023, 88th Legislature, Ch. 915 (HB 3162), effective September 1, 2023. Sec. 14 of HB 3162 provides: "Section 166.209, Health and Safety Code, as amended by this Act, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose."

Sec. 313.004. CONSENT FOR MEDICAL TREATMENT.

(a) If an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, is comatose, incapacitated, or otherwise mentally or physically incapable of communication and does not have a legal guardian or an agent under a medical power of attorney who is reasonably available after a reasonably diligent inquiry, an adult surrogate from the following list, in order of priority, who has decision-making capacity, is reasonably available after a reasonably diligent inquiry, and is willing to consent to medical treatment on behalf of the patient may consent to medical treatment on behalf of the patient:

(1) the patient's spouse;

(2) the patient's [~~an adult child of the patient who has the waiver and consent of all other qualified~~] adult children [~~of the patient to act as the sole decision-maker~~];

(3) [~~a majority of~~] the patient's parents [~~reasonably available adult children~~]; or

(4) the patient's nearest living relative [~~parents~~];

or

~~[(5) the individual clearly identified to act for the patient by the patient before the patient became incapacitated, the patient's nearest living relative, or a member of the clergy].~~

(a-1) If the patient does not have a legal guardian, an agent under a medical power of attorney, or a person listed in Subsection (a) who is reasonably available after a reasonably diligent inquiry, another physician who is not involved in the medical treatment of the patient may concur with the treatment.

(b) [No change]

(c) Any medical treatment consented to under Subsection (a) or concurred with under Subsection (a-1) must be based on knowledge of what the patient would desire, if known.

(d) – (f) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 915 (HB 3162), effective September 1, 2023.

Sec. 573.012. ISSUANCE OF WARRANT.

(a) Except as provided by Subsection (h), an applicant for emergency detention must present the application personally to a judge or magistrate. The judge or magistrate shall examine the application and may interview the applicant. Except as provided by Subsections [~~Subsection~~] (g) and (h), the judge of a court with probate jurisdiction by administrative order may provide that the application must be:

(1) presented personally to the court; or

(2) retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge of the court is not available at the time the application is presented.

(b) – (d) [No change]

(e) A person apprehended under this section who is not physically located in a mental health facility at the time the warrant is issued under Subsection (h-1) shall be transported for a preliminary examination in accordance with Section 573.021 to:

(1) the nearest appropriate inpatient mental health facility; or

(2) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.

(f) – (g) [No change]

(h) A judge or magistrate shall [~~may~~] permit an applicant who is a physician to present an application by:

(1) e-mail with the application attached as a secure document in a portable document format (PDF); or

(2) another secure electronic means, including:

(A) satellite transmission;

(B) closed-circuit television transmission;

or

(C) any other method of two-way electronic communication that:

(i) is secure;

(ii) is available to the judge or magistrate; and

(iii) provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between the judge or magistrate and the applicant.

(h-2) A facility may detain a person who is physically located in the facility to perform a preliminary examination in accordance with Section 573.021 if:

(1) a judge or magistrate transmits a warrant to the facility under Subsection (h-1) for the detention of the person; and

(2) the person is not under an order under this chapter or Chapter 574.

(h-3) The Office of Court Administration of the Texas Judicial System shall develop and implement a process for an applicant for emergency detention to electronically present the application under Subsection (h) and for a judge or magistrate to electronically transmit a warrant under Subsection (h-1).

Amended by Acts 2023, 88th Legislature, Ch. 939 (SB 1624), effective September 1, 2023. Sec. 22 of SB 1624 provides: “The changes in law made by this Act apply to an emergency detention under Chapter 573, Health and Safety Code, that begins on or after the effective date of this Act. An emergency detention under Chapter 573, Health and Safety Code, that begins before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.” Sec. 23 of SB 1624 provides: “As soon as practicable after the effective date of this Act, the Office of Court Administration of the Texas Judicial System shall develop the process as required by Section 573.012(h-3), Health and Safety Code, as added by this Act.”

Sec. 593.052. ORDER FOR COMMITMENT.

(a) A proposed resident may not be committed to a residential care facility unless:

(1) the proposed resident is a person with an intellectual disability;

(2) a petition to the court to issue a commitment order by the guardian of the proposed resident or, if the proposed resident is a minor, the parent of the proposed resident or the current interdisciplinary team report and recommendations, if applicable, show [evidence is presented—showing] that because of the proposed resident’s intellectual disability, the proposed resident:

(A) represents a substantial risk of physical impairment or injury to the proposed resident or others; or

(B) is unable to provide for and is not providing for the proposed resident’s most basic personal physical needs;

(3) the proposed resident cannot be adequately and appropriately habilitated in an available, less restrictive setting; and

(4) the residential care facility provides habilitative services, care, training, and treatment appropriate to the proposed resident’s needs.

(b) – (c) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 1145 (SB 944), effective September 1, 2023.

Sec. 692A.005. MANNER OF MAKING ANATOMICAL GIFT BEFORE DONOR’S DEATH.

(a) A donor may make an anatomical gift:

(1) by authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor’s driver’s license or identification card;

(2) in a will;

(3) during a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(4) as provided in Subsection (b) or (b-1).

(b) A donor or other person authorized to make an anatomical gift under Section 692A.004 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed

at the request of the donor or the other person, or be acknowledged before a notary public; and

(2) state that the record has been signed and witnessed or acknowledged as provided in Subdivision (1).

(b-1) A donor or other person authorized to make an anatomical gift under Section 692A.004 may make a gift through an online registry. The online registration:

(1) does not require the consent of another person or require a witness to sign at the donor's request or a notary public to acknowledge the gift; and

(2) constitutes a legal document under this chapter that remains binding after the donor's death.

Amended by Acts 2023, 88th Legislature, Ch. 363 (SB 2186), effective September 1, 2023. Sec. 5 of SB 2186 provides: "Sections 692A.005, 692A.006, and 692A.007, Health and Safety Code, as amended by this Act, apply only to the validity of a record executed on or after the effective date of this Act. The validity of a record executed before the effective date of this Act is governed by the law in effect on the date the record was executed, and that law continues in effect for that purpose." Sec. 6 of SB 2186 provides: "The change in law made by this Act applies only to a document executed on or after the effective date of this Act. A document executed before the effective date of this Act is governed by the law on the date the document was executed, and that law is continued in effect for that purpose."

Sec. 692A.006. AMENDING OR REVOKING ANATOMICAL GIFT BEFORE DONOR'S DEATH.

(a) [No change]

(b) A record signed pursuant to Subsection (a)(1)(C) must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person, or be acknowledged before a notary public; and

(2) state that the record has been signed and witnessed or acknowledged as provided in Subdivision (1).

(c) – (e) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 363 (SB 2186), effective September 1, 2023. See transitional note following Sec. 692A.005.

Sec. 692A.007. REFUSAL TO MAKE ANATOMICAL GIFT; EFFECT OF REFUSAL.

(a) – (a-3) [No change]

(b) A record signed pursuant to Subsection (a)(1)(B) must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual, or be acknowledged before a notary public; and

(2) state that the record has been signed and witnessed or acknowledged as provided in Subdivision (1).

(c) – (d) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 363 (SB 2186), effective September 1, 2023. See transitional note following Sec. 692A.005.

~~**CHAPTER 692. TEXAS ANATOMICAL GIFT ACT**~~

[Repealed]

Repealed by Acts 2023, 88th Legislature, Ch. 363 (SB 2186), effective September 1, 2023. Sec. 6 of SB 2186 provides: "The change in law made by this Act applies only to a document executed on or after the effective date of this Act. A document executed before the effective date of this Act is governed by the law on the date the document was executed, and that law is continued in effect for that purpose."

Sec. 711.002. DISPOSITION OF REMAINS; DUTY TO INTER.

(a) [No change]

(b) The written instrument referred to in Subsection (a)(1) may be in substantially the following form:

APPOINTMENT FOR DISPOSITION OF REMAINS

I, _____,

(your name and address) being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by _____

(name of agent) in accordance with Sections [Section] 711.002 and 711.004, Health and Safety Code, and, with respect to that subject only, I hereby appoint such person as my agent (attorney-in-fact).

All decisions made by my agent with respect to the disposition of my remains, including cremation, shall be binding.

SPECIAL DIRECTIONS:

Set forth below are any special directions limiting the power granted to my agent:

AGENT:

Name: _____

Address: _____

Telephone Number: _____

SUCCESSORS:

If my agent or a successor agent dies, becomes legally disabled, resigns, or refuses to act, or if my marriage to my agent or successor agent is dissolved by divorce, annulled, or declared void before my death and this instrument does not state that the agent or successor agent continues to serve after my marriage to that agent or successor agent is dissolved by divorce, annulled, or declared void, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent (attorney-in-fact) to control the disposition of my remains as authorized by this document:

1. First Successor

Name: _____

Address: _____

Telephone Number: _____

2. Second Successor

Name: _____

Address: _____

Telephone Number: _____

DURATION:

This appointment becomes effective upon my death.

PRIOR APPOINTMENTS REVOKED:

I hereby revoke any prior appointment of any person to control the disposition of my remains.

RELIANCE:

I hereby agree that any cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to any such party until that party receives actual notice of the modification or revocation. No such party shall be liable because of reliance on a copy of this document.

ASSUMPTION:

THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND BY THE PROVISIONS OF, SECTIONS [~~SECTION~~] 711.002 AND 711.004, HEALTH AND SAFETY CODE.

SIGNATURES:

This written instrument and my appointments of an agent and any successor agent in this instrument are valid without the signature of my agent and any successor agents below. Each agent, or a successor agent, acting pursuant to this appointment must indicate acceptance of the appointment by signing below before acting as my agent.

Signed this _____ day of _____, 20__.

(your signature)

State of _____

County of _____

This document was acknowledged before me on _____ (date) by _____ (name of principal).

(signature of notarial officer)

(Seal, if any, of notary)

(printed name)

My commission expires:

ACCEPTANCE AND ASSUMPTION BY AGENT:

I have no knowledge of or any reason to believe this Appointment for Disposition of Remains has been revoked. I hereby accept the appointment made in this instrument with the understanding that I will be individually liable for the reasonable cost of the decedent's interment, for which I may seek reimbursement from the decedent's estate.

Acceptance of Appointment: _____
(signature of agent)

Date of Signature: _____

Acceptance of Appointment: _____
(signature of first successor)

Date of Signature: _____

Acceptance of Appointment: _____

(signature of second successor)

Date of Signature: _____

(c) – (l) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 284 (SB 1300), effective September 1, 2023. Sec. 3 of SB 1300 provides: “Section 711.002, Health and Safety Code, as amended by this Act, applies only to the validity of a written instrument executed on or after the effective date of this Act. The validity of a written instrument executed before the effective date of this Act is governed by the law in effect on the date the instrument was executed, and that law continues in effect for that purpose.”

Sec. 711.004. REMOVAL OF REMAINS.

(a) Remains interred in a cemetery may be removed from a plot in the cemetery with the written consent of the cemetery organization operating the cemetery and the written consent of the current plot owner or owners and the following persons, in the priority listed:

(1) the person designated in a written instrument signed by the decedent, as described by Section 711.002(a)(1);

(2) the decedent’s surviving spouse;

(3) any one of [(2)] the decedent’s surviving adult children;

(4) either one of [(3)] the decedent’s surviving parents;

(5) any one of [(4)] the decedent’s surviving adult siblings;

(6) any one of the duly qualified executors or administrators of the decedent’s estate; or

(7) any [(5)-the] adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

(b) – (l) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 284 (SB 1300), effective September 1, 2023.

TAX CODE

Sec. 11.43. APPLICATION FOR EXEMPTION.

(a) – (k) [No change]

(l) The form for an application under Section 11.13 must include a space for the applicant to state the applicant’s date of birth and, if applicable, the date of birth of the applicant’s spouse. Failure to provide the applicant’s date of birth does not affect the applicant’s eligibility for an exemption under that section, other than an exemption under Section 11.13(c) or (d) for an individual 65 years of age or older. Failure to provide the date of birth of the applicant’s spouse does not affect the applicant’s eligibility for an exemption under Section 11.13 or the applicant’s spouse’s eligibility for an exemption under that section, other than an exemption under Section 11.13(q) for the surviving spouse of an individual 65 years of age or older.

(m) – (m-1) [No change]

(m-2) Notwithstanding Subsection (a), if a person who receives an exemption under Section 11.13(d) for an individual 65 years of age or older dies in a tax year, that person’s surviving spouse is entitled to receive an exemption under Section 11.13(q) in the next tax year on the same property without applying for the exemption if:

(1) the appraisal district learns of the person’s death from any source, including the death records maintained by the vital statistics unit of the Department of State Health Services or a local registration official; and

(2) the surviving spouse is otherwise eligible to receive the exemption as shown by:

(A) information in the records of the appraisal district that was provided to the appraisal district in an application for an exemption under Section 11.13 on the property or in correspondence relating to the property; or

(B) information provided by the Texas Department of Public Safety to the appraisal district under Section 521.049, Transportation Code.

(m-3) Subsection (m-2) does not apply if the chief appraiser determines that the surviving spouse is no longer entitled to any exemption under Section 11.13 on the property.

(n) – (s) [No change]

Amended by Acts 2023, 88th Legislature, Ch. 252 (SB 1381), effective January 1, 2024. Sec. 3 of SB 1381 provides: “This Act applies only to ad valorem taxes imposed for an ad valorem tax year that begins on or after the effective date of this Act.”