

CHAPTER XIII. GUARDIANSHIP
PART 1. GENERAL PROVISIONS
SUBPART A. DEFINITIONS; PURPOSE; APPLICABILITY; PROCEEDINGS IN
REM

Sec. 601. DEFINITIONS. In this chapter:

(1) "Attorney ad litem" means an attorney who is appointed by a court to represent and advocate on behalf of a proposed ward, an incapacitated person, or an unborn person in a guardianship proceeding.

(2) "Authorized corporate surety" means a domestic or foreign corporation authorized to do business in this state to issue surety, guaranty, or indemnity bonds guaranteeing the fidelity of guardians.

(3) "Child" includes a biological or adopted child, whether adopted by a parent under a statutory procedure or by acts of estoppel.

(4) "Claims" includes a liability against the estate of a minor or an incapacitated person and debts due to the estate of a minor or an incapacitated person.

(5) "Community administrator" means a spouse who is authorized to manage, control, and dispose of the entire community estate on the judicial declaration of incapacity of the other spouse, including the part of the community estate that the other spouse legally has the power to manage in the absence of the incapacity.

(6) "Corporate fiduciary" means a financial institution as defined by Section 201.101, Finance Code, having trust powers, existing or doing business under the laws of this state, another state, or the United States, that is authorized by law to act under the order or appointment of any court of record, without giving bond, as a guardian, receiver, trustee, executor, or administrator, or, although without general depository powers, as a depository for any money paid into court, or to become sole guarantor or surety in or on any bond required to be given under the laws of this state.

(7) "Court investigator" means a person appointed by a statutory probate court under Section 25.0025, Government Code.

(8) "Court" or "probate court" means a county court in the exercise of its probate jurisdiction, a court created by statute and authorized to exercise original probate jurisdiction, or a district court exercising original probate jurisdiction in contested matters.

(9) "Estate" or "guardianship estate" means the real and personal property of a ward or deceased ward, both as the property originally existed and as has from time to time changed in form by sale, reinvestment, or otherwise, and as augmented by any accretions and additions to (including any property to be distributed to the representative of the deceased ward by the trustee of a trust that terminates on the ward's death) or substitutions for the property, and as diminished by any decreases to or distributions from the property.

(10) "Exempt property" refers to that property of a deceased ward's estate that is exempt from execution or forced sale by the constitution or laws of this state, and to the allowance in lieu of the property.

(11) "Guardian" means a person who is appointed guardian under Section 693 of this code, or a temporary or successor guardian. Except as expressly provided otherwise, "guardian" includes the guardian of the estate and the guardian of the person of an incapacitated person.

(12) "Guardian ad litem" means a person who is appointed by a court to represent the best interests of an incapacitated person in a guardianship proceeding.

(12-a) "Guardianship Certification Board" means the Guardianship Certification Board established under Chapter 111, Government Code.

(13) "Guardianship program" has the meaning assigned by Section 111.001, Government Code.

(14) "Incapacitated person" means:

(A) a minor;

(B) an adult individual who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs; or

(C) a person who must have a guardian appointed to receive

funds due the person from any governmental source.

(15) "Interested persons" or "persons interested" means an heir, devisee, spouse, creditor, or any other person having a property right in, or claim against, the estate being administered or a person interested in the welfare of an incapacitated person, including a minor.

(16) "Minor" means a person who is younger than 18 years of age and who has never been married or who has not had the person's disabilities of minority removed for general purposes.

(17) "Minutes" means the guardianship minutes.

(18) "Mortgage" or "lien" includes a deed of trust; vendor's lien; chattel mortgage; mechanic's, materialman's, or laborer's lien; judgment, attachment, or garnishment lien; pledge by hypothecation; and a federal or state tax lien.

(19) "Next of kin" includes an adopted child, the descendants of an adopted child, and the adoptive parent of an adopted child.

(20) "Parent" means the mother of a child, a man presumed to be the biological father of a child, a man who has been adjudicated to be the biological father of a child by a court of competent jurisdiction, or an adoptive mother or father of a child, but does not include a parent as to whom the parent-child relationship has been terminated.

(21) "Person" includes natural persons, corporations, and guardianship programs.

(22) "Personal property" includes an interest in goods, money, choses in action, evidence of debts, and chattels real.

(23) "Personal representative" or "representative" includes a guardian, and a successor guardian.

(24) "Private professional guardian" has the meaning assigned by Section 111.001, Government Code.

(25) "Proceedings in guardianship," "guardianship matter," "guardianship matters," "guardianship proceeding," and "proceedings for guardianship" are synonymous and include a matter or proceeding relating to a guardianship or any other matter addressed by this chapter.

(26) "Property" includes both real and personal property.

(27) "Proposed ward" means a person alleged to be incapacitated in a guardianship proceeding.

(28) "Real property" includes estates and interests in lands, corporeal or incorporeal, legal or equitable, other than chattels real.

(29) "Statutory probate court" means a statutory court designated as a statutory probate court under Chapter 25, Government Code. A county court at law exercising probate jurisdiction is not a statutory probate court under this chapter unless the court is designated a statutory probate court under Chapter 25, Government Code.

(30) "Surety" includes a personal and a corporate surety.

(31) "Ward" is a person for whom a guardian has been appointed.

(32) The singular number includes the plural; the plural number includes the singular.

(33) The masculine gender includes the feminine and neuter. Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 15, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1376, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 52, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 344, Sec. 6.005, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 379, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 217, Sec. 2, eff. Sept. 1, 2001.

Subsec. (12-a) added by Acts 2005, 79th Leg., ch. 268, Sec. 3.05, eff. Sept. 1, 2005; Subsec. (13) amended by Acts 2005, 79th Leg., ch. 268, Sec. 3.05, eff. Sept. 1, 2005; Subsec. (24) amended by Acts 2005, 79th Leg., ch. 268, Sec. 3.05, eff. Sept. 1, 2005.

Sec. 602. POLICY; PURPOSE OF GUARDIANSHIP. A court may appoint a guardian with full authority over an incapacitated person or may grant a guardian limited authority over an incapacitated person as indicated by the incapacitated person's actual mental or physical limitations and only as necessary to promote and protect the well-being of the person. If the person is not a minor, the court may not use age as the sole factor in determining whether to appoint a guardian for the person. In creating a guardianship that gives a guardian limited power or authority over an incapacitated person, the court shall design the guardianship to encourage the

development or maintenance of maximum self-reliance and independence in the incapacitated person.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 603. LAWS APPLICABLE TO GUARDIANSHIPS. (a) To the extent applicable and not inconsistent with other provisions of this code, the laws and rules governing estates of decedents apply to and govern guardianships.

(b) A reference in other sections of this code or in other law to a person who is mentally, physically, or legally incompetent, a person who is judicially declared incompetent, an incompetent or an incompetent person, a person of unsound mind, or a habitual drunkard means an incapacitated person.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 604. PROCEEDING IN REM. From the filing of the application for the appointment of a guardian of the estate or person, or both, until the guardianship is settled and closed under this chapter, the administration of the estate of a minor or other incapacitated person is one proceeding for purposes of jurisdiction and is a proceeding in rem.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

PART 2. GUARDIANSHIP PROCEEDINGS AND MATTERS

SUBPART A. JURISDICTION

Sec. 605. COUNTY COURT JURISDICTION. The county court has the general jurisdiction of a probate court. The county court shall appoint guardians of minors and other incapacitated persons, grant letters of guardianship, settle accounts of guardians, and transact all business appertaining to estates subject to guardianship, including the settlement, partition, and distribution of the estates. The county court may also enter other orders as may be authorized under this chapter.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 606. JURISDICTION WITH RESPECT TO GUARDIANSHIP PROCEEDINGS. (a) Repealed by Acts 2003, 78th Leg., ch. 549, Sec. 33.

(b) In those counties in which there is no statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court, all applications, petitions, and motions regarding guardianships, mental health matters, and other matters covered by this chapter shall be filed and heard in the county court. In contested guardianship matters, the judge of the county court may on the judge's own motion, or shall on the motion of any party to the proceeding, according to the motion:

(1) request the assignment of a statutory probate court judge to hear the contested portion of the proceeding, as provided by Section 25.0022, Government Code; or

(2) transfer the contested portion of the proceeding to the district court, which may hear the transferred contested matter as if originally filed in the district court.

(b-1) If the judge of the county court has not transferred a contested guardianship matter to the district court at the time a party files a motion for assignment of a statutory probate court judge, the county judge shall grant the motion and may not transfer the matter to the district court unless the party withdraws the motion.

(b-2) A statutory probate court judge assigned to a contested guardianship matter as provided by Subsection (b) of this section has the jurisdiction and authority granted to a statutory probate court by Sections 607 and 608 of this code. On resolution of a contested matter, including an appeal of a matter, to which a statutory probate court judge has been assigned, the statutory probate court judge shall transfer the resolved portion of the case to the county court for further proceedings not inconsistent with the orders of the statutory probate court judge.

(b-3) In contested matters transferred to the district court, the district court has the general jurisdiction of a probate court. On resolution of a contested matter, including an appeal of a matter, the district court shall transfer the resolved portion of the case to the county court for further proceedings not inconsistent with the orders of the district court.

(b-4) The county court shall continue to exercise jurisdiction over the management of the guardianship with the exception of the contested matter until final disposition of the contested matter is made by the assigned judge or the district court.

(b-5) If a contested portion of the proceeding is

transferred to a district court under Subsection (b-3) of this section, the clerk of the district court may perform in relation to the transferred portion of the proceeding any function a county clerk may perform in that type of contested proceeding.

(c) In those counties in which there is no statutory probate court, but in which there is a county court at law or other statutory court exercising the jurisdiction of a probate court, all applications, petitions, and motions regarding guardianships, mental health matters, or other matters addressed by this chapter shall be filed and heard in those courts and the constitutional county court, unless otherwise provided by law. The judge of a county court may hear any of those matters sitting for the judge of any other county court. Except as provided by Section 608 of this code, in contested guardianship matters, the judge of the constitutional county court may on the judge's own motion, and shall on the motion of a party to the proceeding, transfer the proceeding to the county court at law or a statutory court exercising the jurisdiction of a probate court other than a statutory probate court. The court to which the proceeding is transferred may hear the proceeding as if originally filed in the court.

(d) In those counties in which there is a statutory probate court, all applications, petitions, and motions regarding guardianships, mental health matters, or other matters addressed by this chapter shall be filed and heard in the statutory probate court.

(e) A court that exercises original probate jurisdiction has the power to hear all matters incident to an estate. After a guardianship of the estate of a ward is required to be settled as provided by Section 745 of this chapter, the court exercising original probate jurisdiction over the settling of the former ward's estate has the jurisdiction to hear:

(1) an action brought by or on behalf of the former ward against a former guardian of the ward for alleged misconduct arising from the performance of the person's duties as guardian;

(2) an action against a former guardian of the former ward that is brought by a surety that is called on to perform in place of the former guardian;

(3) a claim for the payment of compensation, expenses, and court costs and any other matter authorized under Subpart H, Part 2, of this chapter;

(4) a matter related to an authorization made or duty performed by a guardian under Subpart C, Part 4, of this chapter; and

(5) any other matter related or appertaining to a guardianship estate that a court exercising original probate jurisdiction is specifically authorized to hear under this chapter.

(f) When a surety is called on to perform in place of a guardian or former guardian, a court exercising original probate jurisdiction, including jurisdiction exercised under Subsection (e)(2) of this section, may award judgment against the guardian or former guardian in favor of the surety of the guardian or former guardian in the same suit.

(g) A final order of a court that exercises original probate jurisdiction is appealable to a court of appeals.

(h) A statutory probate court has concurrent jurisdiction with the district court in all personal injury, survival, or wrongful death actions by or against a person in the person's capacity as a guardian and in all actions involving a guardian in which each other party aligned with the guardian is not an interested person in the guardianship.

(i) A statutory probate court has jurisdiction over any matter appertaining to an estate or incident to an estate and has jurisdiction over any cause of action in which a guardian in a guardianship proceeding pending in the statutory probate court is a party.

(j) A statutory probate court may exercise the pendent and ancillary jurisdiction necessary to promote judicial efficiency and economy.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 16, 17, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1389, Sec. 2, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 63, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 484, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1174, Sec. 1, eff. Sept. 1, 2001.

Section heading amended by Acts 2003, 78th Leg., ch. 549, Sec. 1; Subsec. (a) repealed by Acts 2003, 78th Leg., ch. 549, Sec. 33, eff. Sept. 1, 2003; Subsec. (b) amended by Acts 2003, 78th Leg., ch. 549, Sec. 2, eff. Sept. 1, 2003; Subsecs. (b-1) to (b-5) added by Acts 2003, 78th Leg., ch. 549, Sec. 2, eff. Sept. 1, 2003; Subsecs. (c), (d) amended by Acts 2003, 78th Leg., ch. 549, Sec. 2; Subsec. (e) amended by Acts 2003, 78th Leg., ch. 549, Sec. 3; Subsec. (f) amended by Acts 2003, 78th Leg., ch. 549, Sec. 4; Subsecs. (h) to (j) added by Acts 2003, 78th Leg., ch. 549, Sec. 5, eff. Sept. 1, 2003.

Sec. 607. MATTERS APPERTAINING AND INCIDENT TO AN ESTATE. (a) In a proceeding in a constitutional county court or a statutory county court at law, the phrases "appertaining to estates" and "incident to an estate" in this chapter include the appointment of guardians, the issuance of letters of guardianship, a claim by or against a guardianship estate, all actions for trial of title to land incident to a guardianship estate and for the enforcement of liens incident to a guardianship estate, all actions for trial of the right of property incident to a guardianship estate, and generally all matters relating to the settlement, partition, and distribution of a guardianship estate.

(b) In a proceeding in a statutory probate court, the phrases "appertaining to estates" and "incident to an estate" in this chapter include the appointment of guardians, the issuance of letters of guardianship, all claims by or against a guardianship estate, all actions for trial of title to land and for the enforcement of liens on the land, all actions for trial of the right of property, and generally all matters relating to the collection, settlement, partition, and distribution of a guardianship estate. A statutory probate court, in the exercise of its jurisdiction and notwithstanding any other provision of this chapter, may hear all suits, actions, and applications filed against or on behalf of any guardianship; all such suits, actions, and applications are appertaining to and incident to an estate. Except for situations in which the jurisdiction of a statutory probate court is concurrent with that of a district court or any other court, any cause of action appertaining to or incident to a guardianship estate shall be brought in a statutory probate court.

(c), (d) Repealed by Acts 2003, 78th Leg., ch. 549, Sec. 33.

(e) Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code. Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 10, Sec. 1, 2, eff. Sept. 1, 1999.

Subsec. (b) amended by Acts 2003, 78th Leg., ch. 549, Sec. 6, eff. Sept. 1, 2003. Subsecs. (c), (d), (e) repealed by Acts 2003, 78th Leg., ch. 549, Sec. 33, eff. Sept. 1, 2003. Subsec. (e) added by Acts 2003, 78th Leg., ch. 204, Sec. 3.07, eff. Sept. 1, 2003.

Sec. 608. TRANSFER OF GUARDIANSHIP PROCEEDING. A judge of a statutory probate court, on the motion of a party to the action or of a person interested in a guardianship, may transfer to the judge's court from a district, county, or statutory court a cause of action appertaining to or incident to a guardianship estate that is pending in the statutory probate court or a cause of action relating to a guardianship in which a guardian, ward, or proposed ward in a guardianship pending in the statutory probate court is a party and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to the guardianship estate.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1431, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2003, 78th Leg., ch. 549, Sec. 7, eff. Sept. 1, 2003.

Sec. 609. CONTESTED GUARDIANSHIP OF THE PERSON OF A MINOR. (a) If an interested person contests an application for the appointment of a guardian of the person of a minor or an interested person seeks the removal of a guardian of the person of a minor, the judge, on the judge's own motion, may transfer all matters relating to the guardianship of the person of the minor to a court of competent jurisdiction in which a suit affecting the parent-child relationship under the Family Code is pending.

(b) The probate court that transfers a proceeding under this

section to a court with proper jurisdiction over suits affecting the parent-child relationship shall send to the court to which the transfer is made the complete files in all matters affecting the guardianship of the person of the minor and certified copies of all entries in the minutes. The transferring court shall keep a copy of the transferred files. If the transferring court retains jurisdiction of the guardianship of the estate of the minor or of another minor who was the subject of the suit, the court shall send a copy of the complete files to the court to which the transfer is made and shall keep the original files.

(c) The court to which a transfer is made under this section shall apply the procedural and substantive provisions of the Family Code, including Sections 155.005 and 155.205, in regard to enforcing an order rendered by the court from which the proceeding was transferred.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 77, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 165, Sec. 7.55, eff. Sept. 1, 1997.

SUBPART B. VENUE

Sec. 610. VENUE FOR APPOINTMENT OF GUARDIAN. (a) Except as otherwise authorized by this section, a proceeding for the appointment of a guardian for the person or estate, or both, of an incapacitated person shall be brought in the county in which the proposed ward resides or is located on the date the application is filed or in the county in which the principal estate of the proposed ward is located.

(b) A proceeding for the appointment of a guardian for the person or estate, or both, of a minor may be brought:

(1) in the county in which both the minor's parents reside;

(2) if the parents do not reside in the same county, in the county in which the parent who is the sole managing conservator of the minor resides, or in the county in which the parent who is the joint managing conservator with the greater period of physical possession of and access to the minor resides;

(3) if only one parent is living and the parent has custody of the minor, in the county in which that parent resides;

(4) if both parents are dead but the minor was in the custody of a deceased parent, in the county in which the last surviving parent having custody resided; or

(5) if both parents of a minor child have died in a common disaster and there is no evidence that the parents died other than simultaneously, in the county in which both deceased parents resided at the time of their simultaneous deaths if they resided in the same county.

(c) A proceeding for the appointment of a guardian who was appointed by will may be brought in the county in which the will was admitted to probate or in the county of the appointee's residence if the appointee resides in this state.

(d) Repealed by Acts 1999, 76th Leg., ch. 379, Sec. 10, eff. Sept. 1, 1999.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 379, Sec. 10, eff. Sept. 1, 1999.

Sec. 611. CONCURRENT VENUE AND TRANSFER FOR WANT OF VENUE. (a) If two or more courts have concurrent venue of a guardianship matter, the court in which an application for a guardianship proceeding is initially filed has and retains jurisdiction of the guardianship matter. A proceeding is considered commenced by the filing of an application alleging facts sufficient to confer venue, and the proceeding initially legally commenced extends to all of the property of the guardianship estate.

(b) If a guardianship proceeding is commenced in more than one county, it shall be stayed except in the county in which it was initially commenced until final determination of proper venue is made by the court in the county in which it was initially commenced.

(c) If it appears to the court at any time before the guardianship is closed that the proceeding was commenced in a court that did not have venue over the proceeding, the court shall, on the application of any interested person, transfer the proceeding to the proper county.

(d) When a proceeding is transferred to another county under a provision of this chapter, all orders entered in connection with the proceeding shall be valid and shall be recognized in the court to which the guardianship was ordered transferred, if the orders

were made and entered in conformance with the procedures prescribed by this code.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 612. APPLICATION FOR TRANSFER OF GUARDIANSHIP TO ANOTHER COUNTY. When a guardian or any other person desires to remove the transaction of the business of the guardianship from one county to another, the person shall file a written application in the court in which the guardianship is pending stating the reason for moving the transaction of business.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 613. NOTICE. (a) On filing an application to remove a guardianship to another county, the sureties on the bond of the guardian shall be cited by personal service to appear and show cause why the application should not be granted.

(b) If an application is filed by a person other than the guardian, the guardian shall be cited by personal service to appear and show cause why the application should not be granted.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 614. COURT ACTION. On hearing an application under Section 612 of this code, if good cause is not shown to deny the application and it appears that removal of the guardianship is in the best interests of the ward, the court shall enter an order authorizing the removal on payment on behalf of the estate of all accrued costs.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 615. TRANSFER OF RECORD. When an order of removal is made under Section 614 of this code, the clerk shall record any unrecorded papers of the guardianship required to be recorded. On payment of the clerk's fee, the clerk shall transmit to the county clerk of the county to which the guardianship was ordered removed:

- (1) the case file of the guardianship proceedings; and
- (2) a certified copy of the index of the guardianship records.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 2005, 79th Leg., ch. 200, Sec. 1, eff. Sept. 1, 2005.

Sec. 616. REMOVAL EFFECTIVE. The order removing a guardianship does not take effect until:

- (1) the case file and a certified copy of the index required by Section 615 of this code are filed in the office of the county clerk of the county to which the guardianship was ordered removed; 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 the court ordering the removal by the county clerk of the county to which the guardianship was ordered removed.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 2005, 79th Leg., ch. 200, Sec. 2, eff. Sept. 1, 2005.

Sec. 617. CONTINUATION OF GUARDIANSHIP. When a guardianship is removed from one county to another in accordance with this subpart, the guardianship proceeds in the court to which it was removed as if it had been originally commenced in that court. It is not necessary to record in the receiving court any of the papers in the case that were recorded in the court from which the case was removed.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 618. NEW GUARDIAN APPOINTED ON REMOVAL. If it appears to the court that removal of the guardianship is in the best interests of the ward, but that because of the removal it will be unduly expensive or unduly inconvenient to the estate for the guardian of the estate to continue to serve in that capacity, the court may in its order of removal revoke the letters of guardianship and appoint a new guardian, and the former guardian shall account for and deliver the estate as provided by this chapter in a case in which a guardian resigns.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

SUBPART C. DUTIES AND RECORDS OF CLERK

Sec. 621. APPLICATION AND OTHER PAPERS TO BE FILED WITH CLERK. (a) An application for a guardianship proceeding, a complaint, petition, or other paper permitted or required by law to be filed in the court in guardianship matters shall be filed with the county clerk of the proper county.

(b) The county clerk shall file the paper received under this section and endorse on each paper the date filed, the docket

number, and the clerk's official signature.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 622. COSTS AND SECURITY. (a) The laws regulating costs in ordinary civil cases apply to a guardianship matter unless otherwise expressly provided by this chapter.

(b) When a person other than the guardian, attorney ad litem, or guardian ad litem files an application, complaint, or opposition in relation to a guardianship matter, the clerk may require the person to give security for the probable costs of the guardianship proceeding before filing. A person interested in the guardianship or in the welfare of the ward, or an officer of the court, at any time before the trial of an application, complaint, or opposition in relation to a guardianship matter, may obtain from the court, on written motion, an order requiring the person who filed the application, complaint, or opposition to give security for the probable costs of the proceeding. The rules governing civil suits in the county court relating to this subject control in these cases.

(c) No security for costs shall be required of a guardian, attorney ad litem, or guardian ad litem appointed under this chapter by a court of this state in any suit brought by the guardian, attorney ad litem, or guardian ad litem in their respective fiduciary capacities.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 623. JUDGE'S GUARDIANSHIP DOCKET. (a) The county clerk shall keep a record book to be styled "Judge's Guardianship Docket" and shall enter in the record book:

(1) the name of each person on whose person or estate a proceeding is had or is sought to be had;

(2) the name of the guardian of the estate or person or of the applicant for letters;

(3) the date the original application for a guardianship proceeding was filed;

(4) a minute, including the date, of each order, judgment, decree, and proceeding in each estate; and

(5) a number of each guardianship on the docket in the order in which a proceeding is commenced.

(b) Each paper filed in a guardianship proceeding shall be given the corresponding docket number of the estate.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 624. CLAIM DOCKET. The county clerk shall keep a record book to be styled "Claim Docket" and shall enter in the claim docket all claims presented against a guardianship for court approval. The claim docket shall be ruled in 16 columns at proper intervals from top to bottom, with a short note of the contents at the top of each column. One or more pages shall be assigned to each guardianship. The following information shall be entered in the respective columns beginning with the first or marginal column: The names of claimants in the order in which their claims are filed; the amount of the claim; its date; the date of filing; when due; the date from which it bears interest; the rate of interest; when allowed by the guardian; the amount allowed; the date of rejection; when approved; the amount approved; when disapproved; the class to which the claim belongs; when established by judgment of a court; the amount of the judgment.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 625. CASE FILES. The county clerk shall maintain a case file for each person's filed guardianship proceedings. The case file must contain all orders, judgments, and proceedings of the court and any other guardianship filing with the court, including all:

- (1) applications for the granting of guardianship;
- (2) citations and notices, whether published or posted, with the returns on the citations and notices;
- (3) bonds and official oaths;
- (4) inventories, appraisements, and lists of claims;
- (5) exhibits and accounts;
- (6) reports of hiring, renting, or sale;
- (7) applications for sale or partition of real estate and reports of sale and of commissioners of partition;
- (8) applications for authority to execute leases for mineral development, or for pooling or unitization of lands, royalty, or other interest in minerals, or to lend or invest money;
- (9) reports of lending or investing money; and
- (10) reports of guardians of the persons.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 67, Sec. 2, eff. Sept. 1, 1999.

Sec. 626. GUARDIANSHIP FEE BOOK. The county clerk shall keep a record book styled "Guardianship Fee Book" and shall enter in the guardianship fee book each item of costs that accrue to the officers of the court, with witness fees, if any, showing the:

- (1) party to whom the costs or fees are due;
- (2) date of the accrual of the costs or fees;
- (3) guardianship or party liable for the costs or fees; and
- (4) date on which the costs or fees are paid.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 627. MAINTAINING RECORDS IN LIEU OF RECORD BOOKS. In lieu of keeping the record books described by Sections 623, 624, and 626 of this code, the county clerk may maintain the information relating to a person's guardianship proceeding maintained in those record books on a computer file, on microfilm, in the form of a digitized optical image, or in another similar form of data compilation.

Added by Acts 1999, 76th Leg., ch. 67, Sec. 2, eff. Sept. 1, 1999.

Sec. 627A. INDEX. The county clerk shall properly index the records and keep the index open for public inspection but may not release the index from the clerk's custody.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Renumbered from V.A.T.S. Probate Code, Sec. 627 and amended by Acts 1999, 76th Leg., ch. 67, Sec. 2, eff. Sept. 1, 1999.

Sec. 628. USE OF RECORDS AS EVIDENCE. The record books or individual case files, including records on a computer file, on microfilm, in the form of a digitized optical image, or in another similar form of data compilation described in other sections of this chapter, or certified copies or reproductions of the records, shall be evidence in any court of this state.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 67, Sec. 2, eff. Sept. 1, 1999.

Sec. 629. CALL OF THE DOCKETS. The judge of the court in which a guardianship proceeding is pending, as the judge determines, shall call guardianship matters in their regular order on both the guardianship and claim dockets and shall make necessary orders.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 630. CLERK MAY SET HEARINGS. If the county judge is absent from the county seat or is on vacation, disqualified, ill, or deceased and is unable to designate the time and place for hearing a guardianship matter pending in the judge's court, the county clerk of the county in which the matter is pending may designate the time and place for hearing, entering the setting on the judge's docket and certifying on the docket the reason that the judge is not acting to set the hearing. If a qualified judge is not present for the hearing, after service of the notices and citations required by law with reference to the time and place of hearing has been perfected, the hearing is automatically continued from day to day until a qualified judge is present to hear and determine the matter.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 631. CLERK'S DUTIES. (a) If the proper venue is finally determined to be in another county, the clerk, after making and retaining a true copy of the entire file in the case, shall transmit the original file to the proper county, and a proceeding shall be held in the proper county in the same manner as if the proceeding had originally been instituted in the proper county.

(b) By transmitting to the proper court in the proper county for venue purposes the original file in the case, with certified copies of all entries in the minutes made in the file, an administration of the guardianship in the proper county for venue purposes shall be completed in the same manner as if the proceeding had originally been instituted in that county.

(c) The clerk of the court from which the proceeding is transferred shall transmit to the court to which the proceeding is transferred the original file in the proceeding and a certified copy of the entries in the minutes that relate to the proceeding.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

SUBPART D. SERVICE AND NOTICE

Sec. 632. ISSUANCE, CONTENTS, SERVICE, AND RETURN OF CITATION, NOTICES, AND WRITS IN GUARDIANSHIP MATTERS. (a) A person does not need to be cited or otherwise given notice in a guardianship matter except in situations in which this chapter expressly provides for citation or the giving of notice. If this

chapter does not expressly provide for citation or the issuance or return of notice in a guardianship matter, the court may require that notice be given. If the court requires that notice be given, the court shall prescribe the form and manner of service and return of service.

(b) Unless a court order is required by a provision of this chapter, the county clerk shall issue without a court order necessary citations, writs, and process in guardianship matters and all notices not required to be issued by guardians.

(c) A citation and notice issued by the clerk shall be signed and sealed by the clerk and shall be styled "The State of Texas." A notice required to be given by a guardian shall be in writing and signed by the guardian in the guardian's official capacity. A citation or notice shall be dated and directed to the person that is being cited or notified and must state the style and number of the proceeding and the court in which the proceeding is pending and must describe generally the nature of the proceeding or matter to which the citation or notice relates. A precept directed to an officer is not necessary. A citation or notice must direct the person cited or notified to appear by filing a written contest or answer or perform other required acts. A citation or notice must state when and where an appearance or performance by a person cited or notified is required. A citation or notice is not defective because it contains a precept directed to an officer authorized to serve it. A writ or other process other than a citation or notice shall be directed "To any sheriff or constable within the State of Texas" and may not be held defective because it is directed to the sheriff or any constable of a specific county if the writ or other process is properly served within the named county by an officer authorized to serve it.

(d) In all situations in which this chapter requires that notice be given or that a person be cited, and in which a specific method of giving the notice or citing the person, or a specific method of service and return of the citation or notice is not given, or an insufficient or inadequate provision appears with respect to any matter relating to citation or notice, or on request of an interested person, notice or citation shall be issued, served, and returned in the manner the court, by written order, directs in accordance with this chapter and the Texas Rules of Civil Procedure and has the same force and effect as if the manner of service and return had been specified in this chapter.

(e) Except in instances in which this chapter expressly provides for another method of service, a notice or citation required to be served on a guardian or receiver shall be served by the clerk that issues the citation or notice. The clerk shall serve the citation or notice by sending the original citation or notice by registered or certified mail to the attorney of record for the guardian or receiver or to the guardian or receiver, if the guardian or receiver does not have an attorney of record.

(f)(1) In cases in which it is provided that personal service shall be had with respect to a citation or notice, the citation or notice must be served on the attorney of record for the person who is being cited or notified. Notwithstanding the requirement of personal service, service may be made on the attorney by any method specified under this chapter for service on an attorney. If there is no attorney of record in the proceeding for the person who is being cited or notified, or if an attempt to make service on the attorney was unsuccessful, a citation or notice directed to a person within this state must be served in person by the sheriff or constable on the person who is being cited or notified by delivering to the person a true copy of the citation or notice at least 10 days before the return day on the citation or notice, exclusive of the date of service. If the person who is being cited or notified is absent from the state or is a nonresident, the citation or notice may be served by a disinterested person competent to make oath of the fact. The citation or notice served by a disinterested person shall be returnable at least 10 days after the date of service, exclusive of the date of service. The return of the person serving the citation or notice shall be endorsed on or attached to the citation or notice. The return must show the time and place of service, certify that a true copy of the citation or notice was delivered to the person directed to be served, be subscribed and sworn to before an officer authorized by the laws of this state to take affidavits, under the hand and official seal of the officer, and returned to the county clerk who issued the citation or notice.

If the citation or notice is returned with the notation that the person sought to be served, whether or not within this state, cannot be found, the clerk shall issue a new citation or notice directed to the person sought to be served and service shall be by publication.

(2) When citation or notice is required to be posted, the sheriff or constable shall post the citation or notice at the courthouse door of the county in which the proceeding is pending, or at the place in or near the courthouse where public notices customarily are posted, for at least 10 days before the return day of the citation or notice, exclusive of the date of posting. The clerk shall deliver the original and a copy of the citation or notice to the sheriff or a constable of the proper county, who shall post the copy as prescribed by this section and return the original to the clerk, stating in a written return of the copy the time when and the place where the sheriff or constable posted the copy. The date of posting is the date of service. When posting of notice by a guardian is authorized or required, the method prescribed by this section shall be followed. The notice is to be issued in the name of the guardian, addressed and delivered to, posted and returned by, the proper officer, and filed with the clerk.

(3) When a person is to be cited or notified by publication, the citation or notice shall be published once in a newspaper of general circulation in the county in which the proceeding is pending, and the publication shall be not less than 10 days before the return date of the citation or notice, exclusive of the date of publication. The date of publication of the newspaper in which the citation or notice is published appears is the date of service. If there is no newspaper of general circulation published or printed in the county in which citation or notice is to be had, service of the citation or notice shall be by posting.

(4)(A) When a citation or notice is required or permitted to be served by registered or certified mail, other than a notice required to be given by a guardian, the clerk shall issue the citation or notice and shall serve the citation or notice by sending the original citation or notice by registered or certified mail. A guardian shall issue notice required to be given by the guardian by registered or certified mail, and the guardian shall serve the notice by sending the original notice by registered or certified mail. The citation or notice shall be mailed return receipt requested with instructions to deliver to the addressee only. The envelope containing the citation or notice shall be addressed to the attorney of record in the proceeding for the person who is being cited or notified, but if there is no attorney of record, or if the citation or notice is returned undelivered, the envelope containing the citation or notice shall be addressed to the person who is being cited or notified. A copy of the citation or notice and the certificate of the clerk or guardian showing the fact and date of mailing shall be filed and recorded. If a receipt is returned, it shall be attached to the certificate.

(B) When a citation or notice is required or permitted to be served by ordinary mail, the clerk or the guardian when required by statute or court order, shall serve the citation or notice by mailing the original to the person being cited or notified. A copy of the citation or notice and a certificate of the person serving the citation or notice that shows the fact and time of mailing shall be filed and recorded.

(C) When service is made by mail, the date of mailing is the date of service. Service by mail must be made not less than 20 days before the return day of the citation or notice, exclusive of the date of service.

(D) If a citation or notice served by mail is returned undelivered, a new citation or notice shall be issued, and the new citation or notice shall be served by posting.

(g) A citation or notice issued by the clerk and served by personal service, by mail, by posting, or by publication shall be returned to the court from which the citation or notice was issued on the first Monday after the service is perfected.

(h) In a guardianship matter in which citation or notice is required to be served by posting and issued in conformity with the applicable provision of this code, the citation or notice and the service of and return of the citation or notice is sufficient and valid if a sheriff or constable posts a copy of the citation or notice at the place or places prescribed by this chapter on a day that is sufficiently before the return day contained in the citation or notice for the period of time for which the citation or

notice is required to be posted to elapse before the return day of the citation or notice. The sufficiency or validity of the citation or notice or the service of or return of the service of the citation or notice is not affected by the fact that the sheriff or constable makes his return on the citation or notice and returns the citation or notice to the court before the period elapses for which the citation or notice is required to be posted, even though the return is made, and the citation or notice is returned to the court, on the same day it is issued.

(i) Proof of service by publication, posting, mailing, or otherwise in all cases requiring notice or citation shall be filed before a hearing. Proof of service made by a sheriff or constable shall be made by the return of service. Service made by a private person shall be proved by the person's affidavit. Proof of service by publication shall be made by an affidavit of the publisher or of an employee of the publisher that shows the issue date of the newspaper that carried the notice or citation and that has attached to or embodied in the affidavit a copy of the notice or citation. Proof of service by mail shall be made by the certificate of the clerk, or the affidavit of the guardian or other person that makes the service that states the fact and time of mailing. The return receipt must be attached to the certificate, if a receipt has been returned if service is made by registered or certified mail.

(j) At any time after an application is filed for the purpose of commencing a guardianship proceeding, a person interested in the estate or welfare of a ward or an incapacitated person may file with the clerk a written request that the person be notified of any or all specifically designated motions, applications, or pleadings filed by any person, or by a person specifically designated in the request. The person who makes the request is responsible for the fees and costs associated with the documents specified in the request. The clerk may require a deposit to cover the estimated costs of furnishing the person with the requested notice. The clerk by ordinary mail shall send to the requesting person a copy of any document specified in the request. A proceeding is not invalid if the clerk fails to comply with the request under this subsection.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 633. NOTICE AND CITATION. (a) On the filing of an application for guardianship, notice shall be issued and served as provided by this section.

(b) The court clerk shall issue a citation stating that the application for guardianship was filed, the name of the proposed ward, the name of the applicant, and the name of the person to be appointed guardian as provided in the application, if that person is not the applicant. The citation must cite all persons interested in the welfare of the proposed ward to appear at the time and place stated in the notice if they wish to contest the application. The citation shall be posted.

(c) The sheriff or other officer shall personally serve citation to appear and answer the application for guardianship on:

- (1) a proposed ward who is 12 years of age or older;
- (2) the parents of a proposed ward if the whereabouts of the parents are known or can be reasonably ascertained;
- (3) any court-appointed conservator or person having control of the care and welfare of the proposed ward;
- (4) a proposed ward's spouse if the whereabouts of the spouse are known or can be reasonably ascertained; and
- (5) the person named in the application to be appointed guardian, if that person is not the applicant.

(d) The applicant shall mail a copy of the application for guardianship and a notice containing the information required in the citation issued under Subsection (b) of this section by 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) all adult children of a proposed ward;
- (2) all adult siblings of a 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 Section 679 of this code, 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 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 person named as next of kin in the application for guardianship as required by Section 682(10) or (12) of this code.

(d-1) The applicant shall file with the court:

(1) a copy of any notice required by Subsection (d) of this section and the 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 mailed as required by Subsection (d) of this section; and

(B) the name of each person to whom the notice was mailed, if the person's name is not shown on the proof of delivery.

(e) A person other than the proposed ward who is entitled to receive notice or personal service of citation under Subsections (c) and (d) of this section may choose, in person or by attorney ad litem, by writing filed with the clerk, to waive the receipt of notice or the issuance and personal service of citation.

(f) The court may not act on an application for the creation of a guardianship until the Monday following the expiration of the 10-day period beginning the date service of notice and citation has been made as provided by Subsections (b), (c), and (d)(1) of this section and the applicant has complied with Subsection (d-1) of this section. The validity of a guardianship created under this chapter is not affected by the failure of the applicant to comply with the requirements of Subsections (d)(2)-(9) of this section.

(g) It is not necessary for a person who files an application for the creation of a guardianship under this chapter to be served with citation or waive the issuance and personal service of citation under this section.

Added by Acts 1995, 74th Leg., ch. 1039, Sec. 18, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 77, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 379, Sec. 3, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 997, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 940, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1174, Sec. 2, eff. Sept. 1, 2001.

Subsecs. (d), (f) amended by Acts 2003, 78th Leg., ch. 549, Sec. 8, eff. Sept. 1, 2003; Subsec. (d-1) added by Acts 2003, 78th Leg., ch. 549, Sec. 8.

Sec. 634. SERVICE ON ATTORNEY. (a) If an attorney has entered an appearance on record for a party in a guardianship proceeding, a citation or notice required to be served on the party shall be served on the attorney. Service on the attorney of record is in lieu of service on the party for whom the attorney appears. Except as provided by Section 633(e) of this code, an attorney ad litem may not waive personal service of citation.

(b) A notice served on an attorney under this section may be served by registered or certified mail, return receipt requested, by any other form of mail requiring proof of delivery, or by delivery to the attorney in person. A party to the proceeding or the party's attorney of record, an appropriate sheriff or constable, or another person who is competent to testify may serve notice or citation to an attorney under this section.

(c) A written statement by an attorney of record, the return of the officer, or the affidavit of a person that shows service is prima facie evidence of the fact of service.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 549, Sec. 9, eff. Sept. 1, 2003.

Sec. 635. WAIVER OF NOTICE. A competent person who is interested in a hearing in a guardianship proceeding, in person or by attorney, may waive in writing notice of the hearing. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of a person residing in a foreign country, may waive notice on behalf of the person. A person who submits to the jurisdiction of the court in a hearing is deemed to have waived notice of the hearing.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 636. NOTICES TO DEPARTMENT OF VETERANS AFFAIRS BY GUARDIANS. When an annual or other account of funds, or an application for the expenditure of or investment of funds is filed by a guardian whose ward is a beneficiary of the Department of Veterans Affairs, or when a claim against the estate of a ward who is a beneficiary of the Department of Veterans Affairs is filed, the court shall set a date for the hearing of the account, application, petition, or claim to be held not less than 20 days from the date of the filing of the account, application, petition, or claim. The person who files the account, application, petition, or claim shall give notice of the date of the filing to the office of the Department of Veterans Affairs in whose territory the court is located by mailing to the office a certified copy of the account, application, petition, or claim not later than five days after the date of the filing. An office of the Department of Veterans Affairs, through its attorney, may waive the service of notice and the time within which a hearing may be had in those cases. Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 19, eff. Sept. 1, 1995.

SUBPART E. TRIAL AND HEARING MATTERS

Sec. 641. DEFECTS IN PLEADING. A court may not invalidate a pleading in a guardianship matter or an order based on the pleading based on a defect of form or substance in the pleading, unless the defect has been timely objected to and called to the attention of the court in which the proceeding was or is pending.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 642. STANDING TO COMMENCE OR CONTEST PROCEEDING. (a) Except as provided by Subsection (b) of this section, any person has the right to commence any guardianship proceeding, including a proceeding for complete restoration of a ward's capacity or modification of a ward's guardianship, or to appear and contest any guardianship proceeding or the appointment of a particular person as guardian.

(b) A person who has an interest that is adverse to a proposed ward or incapacitated person may not:

(1) file an application to create a guardianship for the proposed ward or incapacitated person;

(2) contest the creation of a guardianship for the proposed ward or incapacitated person;

(3) contest the appointment of a person as a guardian of the person or estate, or both, of the proposed ward or incapacitated person; or

(4) contest an application for complete restoration of a ward's capacity or modification of a ward's guardianship.

(c) The court shall determine by motion in limine the standing of a person who has an interest that is adverse to a proposed ward or incapacitated person.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 20, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 829, Sec. 2, eff. Sept. 1, 1999.

Sec. 643. TRIAL BY JURY. A party in a contested guardianship proceeding is entitled, on request, to a jury trial.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 644. HEARING BY SUBMISSION. (a) A court may consider by submission a motion or application filed under this chapter unless the proceeding is:

(1) contested; or

(2) an application for the appointment of a guardian.

(b) The burden of proof at a hearing on a motion or application that is being considered by the court on submission is on the party who is seeking relief under the motion or application.

(c) The court may consider a person's failure to file a response to a motion or application that may be considered on submission as a representation that the person does not oppose the motion or application.

(d) A person's request for oral argument is not a response to a motion or application under this section.

(e) The court, on its own motion, may order oral argument on a motion or application that may be considered by submission.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 21, eff. Sept. 1, 1995.

Sec. 645. GUARDIANS AD LITEM. (a) The judge may appoint a guardian ad litem to represent the interests of an incapacitated

person in a guardianship proceeding.

(b) A guardian ad litem is entitled to reasonable compensation for services in the amount set by the court to be taxed as costs in the proceeding.

(c) A guardian ad litem is an officer of the court. The guardian ad litem shall protect the incapacitated person in a manner that will enable the court to determine what action will be in the best interests of the incapacitated person.

(d) If a guardian ad litem is appointed under Section 681(4) of this code, the fees and expenses of the guardian ad litem are costs of the litigation proceeding that made the appointment necessary.

(e) In the interest of judicial economy, the court may appoint as guardian ad litem under Section 681(4) of this code the person who has been appointed attorney ad litem under Section 646 of this code or the person who is serving as an ad litem for the benefit of the ward in any other proceeding.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 645A. IMMUNITY. (a) A guardian ad litem appointed under Section 645, 683, or 694A of this code to represent the interests of an incapacitated person in a guardianship proceeding involving the creation, modification, or termination of a guardianship is not liable for civil damages arising from a recommendation made or an opinion given in the capacity of guardian ad litem.

(b) Subsection (a) of this section does not apply to a recommendation or opinion that is:

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

Added by Acts 2003, 78th Leg., ch. 622, Sec. 1, eff. Sept. 1, 2003.

Sec. 646. APPOINTMENT OF ATTORNEY AD LITEM AND INTERPRETER. (a) In a proceeding under this chapter for the appointment of a guardian, the court shall appoint an attorney ad litem to represent the interests of the proposed ward. The attorney shall be supplied with copies of all of the current records in the case and may have access to all of the proposed ward's relevant medical, psychological, and intellectual testing records.

(b) To be eligible for appointment as an attorney ad litem, a person must have the certification required by Section 647A of this code.

(c) A person whose certificate has expired must obtain a new certificate to be eligible for appointment as an attorney ad litem.

(d) At the time of the appointment of the attorney ad litem, the court shall also appoint a language interpreter or a sign interpreter if necessary to ensure effective communication between the proposed ward and the attorney.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 22, 74, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 379, Sec. 4, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 716, Sec. 1, eff. Sept. 1, 1999.

Sec. 647. DUTIES OF ATTORNEY AD LITEM. (a) An attorney ad litem appointed under Section 646 of this code to represent a proposed ward shall, within a reasonable time before the hearing, interview the proposed ward. To the greatest extent possible, the attorney shall discuss with the proposed ward the law and facts of the case, the proposed ward's legal options regarding disposition of the case, and the grounds on which guardianship is sought.

(b) Before the hearing, the attorney shall review the application for guardianship, certificates of current physical, medical, and intellectual examinations, and all of the proposed ward's relevant medical, psychological, and intellectual testing records.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 647A. CERTIFICATION REQUIREMENT FOR CERTAIN COURT-APPOINTED ATTORNEYS. (a) A court-appointed attorney in any guardianship proceeding must be certified by the State Bar of Texas or a person or other entity designated by the state bar as having successfully completed a course of study in guardianship law and procedure sponsored by the state bar or its designee.

(b) For certification under this section, the state bar shall require three hours of credit.

(c) Except as provided by Subsection (e) of this section, a

certificate issued under this section expires on the second anniversary of the date the certificate is issued.

(d) To be eligible to be appointed by a court to represent a person at a guardianship proceeding, an attorney whose certificate has expired must obtain a new certificate.

(e) A new certificate obtained by a person who previously has been issued a certificate under this section expires on the fourth anniversary of the date the new certificate is issued if the person has been certified each of the four years immediately preceding the date the new certificate is issued.

Added by Acts 1999, 76th Leg., ch. 716, Sec. 2, eff. Sept. 1, 1999.

Sec. 648. COURT VISITOR PROGRAM. (a) Each statutory probate court shall operate a court visitor program to assess the conditions of wards and proposed wards. Another court that has jurisdiction over a guardianship proceeding may operate a court visitor program in accordance with the population needs and financial abilities of the jurisdiction. A court that operates a court visitor program shall use persons willing to serve without compensation to the greatest extent possible.

(b) On request by any interested person, including a ward or proposed ward, or on its own motion, and at any time before the appointment of a guardian or during the pendency of a guardianship of the person or estate, a court may appoint a court visitor to evaluate the ward or proposed ward and provide a written report that substantially complies with Subsection (c) of this section.

(c) A court visitor's report must include:

(1) a description of the nature and degree of capacity and incapacity of the ward or proposed ward, including the medical history of the ward or proposed ward, if reasonably available and not waived by the court;

(2) a medical prognosis and a list of the treating physicians of the ward or proposed ward, when appropriate;

(3) a description of the living conditions and circumstances of the ward or proposed ward;

(4) a description of the social, intellectual, physical, and educational condition of the ward or proposed ward;

(5) a statement that the court visitor has personally visited or observed the ward or proposed ward;

(6) a statement of the date of the most recent visit by the guardian, if one has been appointed;

(7) a recommendation as to any modifications needed in the guardianship or proposed guardianship, including removal or denial of the guardianship; and

(8) any other information required by the court.

(d) The court visitor shall file the report not later than the 14th day after the date of the evaluation conducted by the court visitor, and the court visitor making the report must swear, under penalty of perjury, to its accuracy to the best of the court visitor's knowledge and belief.

(e) A court visitor who has not expressed a willingness to serve without compensation is entitled to reasonable compensation for services in an amount set by the court and to be taxed as costs in the proceeding.

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

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 23, eff. Sept. 1, 1995.

Sec. 648A. DUTIES OF COURT INVESTIGATOR. (a) On the filing of an application for guardianship under Section 682 of this code, a court investigator shall investigate the circumstances alleged in the application to determine whether a less restrictive alternative than guardianship is appropriate.

(b) A court investigator shall:

(1) supervise the court visitor program established under Section 648 of this code and in that capacity serve as the chief court visitor;

(2) investigate a complaint received from any person about a guardianship and report to the judge, if necessary; and

(3) perform other duties as assigned by the judge or required by this code.

(c) After making an investigation under Subsection (a) or (b) of this section, a court investigator shall file with the court a report of the court investigator's findings and conclusions.

Disclosure to a jury of the contents of a court investigator's report is subject to the Texas Rules of Civil Evidence. In a contested case, the court investigator shall provide copies of the report to the attorneys for the parties before the earlier of:

- (1) the seventh day after the day the report is completed; or
- (2) the 10th day before the day the trial is scheduled to begin.

(d) Nothing in this section supersedes any duty or obligation of another to report or investigate abuse or neglect under any statute of this state.

Added by Acts 1995, 74th Leg., ch. 1039, Sec. 24, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 829, Sec. 3, eff. Sept. 1, 1999.

Sec. 649. EVIDENCE. In a guardianship proceeding, the rules relating to witnesses and evidence that govern in the district court apply as far as practicable. If there is no opposing party or attorney of record on whom to serve notice and copies of interrogatories, service may be had by posting notice of the intention to take depositions for a period of 10 days as provided by this chapter in the provisions governing a posting of notice. When notice by posting under this section is filed with the clerk, a copy of the interrogatories shall also be filed. At the expiration of the 10-day period, commission may issue for taking the depositions and the judge may file cross-interrogatories if no person appears. Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 650. DECREES AND SIGNING OF MINUTES. A decision, order, decree, or judgment of the court in a guardianship matter must be rendered in open court, except in a case in which it is otherwise expressly provided. The judge shall approve and sign the guardianship minutes on the first day of each month. If the first day of the month falls on a Saturday, Sunday, or legal holiday, the judge's approval shall be entered on the preceding or succeeding day.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 651. ENFORCEMENT OF ORDERS. The judge may enforce obedience to an order entered against a guardian by attachment and imprisonment. An imprisonment of a guardian may not exceed three days for any one offense, unless expressly provided otherwise in this chapter.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

SUBPART F. POST-TRIAL MATTERS

Sec. 653. EXECUTION. An execution in a guardianship matter shall be directed "To any sheriff or any constable within the State of Texas," made returnable in 60 days, and attested and signed by the clerk officially under the seal of the court. A proceeding under an execution in a guardianship matter is governed so far as applicable by the laws regulating a proceeding under an execution issued from the district court. An execution directed to the sheriff or a constable of a specific county in this state may not be held defective if the execution was properly executed within the county by the officer to whom the direction for execution was given. Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 654. ATTACHMENT FOR PROPERTY. When a complaint in writing and under oath that the guardian is about to remove the estate or any part of the estate beyond the limits of the state is made to the judge by a person interested in the estate of a minor or other incapacitated person, the judge may order a writ to issue, directed "To any sheriff or any constable within the State of Texas," commanding the sheriff or constable to seize the estate or any part of the estate and to hold the estate subject to further court order. The judge may not issue a writ unless the complainant gives a bond, in the sum the judge requires, payable to the guardian of the estate and conditioned on payment of all damages and costs that shall be recovered for a wrongful suit out of the writ. A writ of attachment directed to the sheriff or a constable of a specific county in this state is not defective if the writ was properly executed within the county by the officer to whom the direction to seize the estate was given.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 655. GUARDIAN TO SERVE PENDING APPEAL OF APPOINTMENT. Pending an appeal from an order or judgment appointing a guardian, an appointee shall continue to act as guardian and shall continue the prosecution of a pending suit in favor of the guardianship.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 656. APPEAL BOND OF GUARDIAN. When a guardian appeals, a bond is not required, unless the appeal personally concerns the guardian, in which case the guardian must give the bond.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 657. BILL OF REVIEW. A person interested, including a ward, by bill of review filed in the court in which a guardianship proceeding took place, may have a decision, order, or judgment rendered by the court, revised and corrected if an error is shown on the decision, order, or judgment. A process or action under the decision, order, or judgment is not stayed except by writ of injunction. A bill of review may not be filed after two years have elapsed from the date of the decision, order, or judgment. A person with a disability has two years after the removal of the person's respective disability to apply for a bill of review.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

SUBPART G. LETTERS OF GUARDIANSHIP

Sec. 659. ISSUANCE OF LETTERS OF GUARDIANSHIP. (a) When a person who is appointed guardian has qualified under Section 699 of this code, the clerk shall issue to the guardian a certificate under seal, stating the fact of the appointment, of the qualification, the date of the appointment and qualification, and the date the letters of guardianship expire. The certificate issued by the clerk constitutes letters of guardianship.

(b) All letters of guardianship expire one year and four months after the date of issuance unless renewed.

(c) The clerk may not renew letters of guardianship relating to the appointment of a guardian of the estate until the court receives and approves the guardian's annual accounting. The clerk may not renew letters of guardianship relating to the appointment of a guardian of the person until the court receives and approves the annual report. If the guardian's annual accounting or annual report is disapproved or not timely filed, the clerk may not issue further letters of guardianship to the delinquent guardian unless ordered by the court.

(d) Regardless of the date the court approves an annual accounting or annual report for purposes of this section, a renewal relates back to the date the original letters of guardianship are issued, unless the accounting period has been changed as provided by this chapter, in which case a renewal relates back to the first day of the accounting period.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 25, eff. Sept. 1, 1995.

Sec. 660. LETTERS OR ORDER MADE EVIDENCE. (a) Letters of guardianship or a certificate under seal of the clerk of the court that granted the letters issued under Section 659 of this code is sufficient evidence of the appointment and qualification of the guardian and of 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 been issued under Section 659 of this code.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 26, eff. Sept. 1, 1995.

Sec. 661. ISSUANCE OF NEW LETTERS. When letters of guardianship have been destroyed or lost, the clerk shall issue new letters that have the same force and effect as the original letters. The clerk shall also issue any number of letters on request of the person who holds the letters.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 662. RIGHTS OF THIRD PERSONS DEALING WITH GUARDIAN. When a guardian who has qualified performs any act as guardian that is in conformity with the guardian's authority and the law, the guardian's act continues to be valid for all intents and purposes in regard to the rights of an innocent purchaser of the property of the guardianship estate who purchased the property from the guardian for a valuable consideration, in good faith, and without notice of any illegality in the title to the property, even if the guardian's act or the authority under which the act was performed may later be set aside, annulled, or declared invalid.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 663. VALIDATION OF CERTAIN LETTERS OF

GUARDIANSHIP. All presently existing letters of guardianship issued to a nonresident guardian, with or without the procedure provided in this subpart, in whole or in part, and with or without a notice or citation required of resident guardians, are validated as of each letter's date, insofar as the absence of the procedure, notice, or citations is concerned. An otherwise valid conveyance, mineral lease, or other act of a nonresident guardian qualified and acting in connection with the letters of guardianship under supporting orders of a county or probate court of this state are validated. This section does not apply to any letters, conveyance, lease, or other act of a nonresident guardian under this section if the absence of the procedure, notice, or citation involving the letters, conveyance, lease, or other act of the nonresident guardian is an issue in a lawsuit pending in this state on September 1, 1993.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

SUBPART H. COMPENSATION, EXPENSES, AND COURT COSTS

Sec. 665. COMPENSATION OF GUARDIANS AND TEMPORARY GUARDIANS. (a) The court may authorize compensation for a guardian or a temporary 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 shall set the compensation in an amount not exceeding five percent of the ward's gross income. In determining whether to authorize compensation for a guardian under this section, the court shall consider the ward's monthly income from all sources and whether the ward receives medical assistance under the state Medicaid program.

(b) The guardian or temporary guardian of an estate is entitled to reasonable compensation on application to the court at the time the court approves any annual accounting or final accounting filed by the guardian or temporary guardian under this chapter. A fee of five percent of the gross income of the ward's estate and five percent of all money paid out of the estate is considered reasonable under this subsection if the court finds that the guardian or temporary guardian has taken care of and managed the estate in compliance with the standards of this chapter.

(c) On application of an interested person or on its own motion, the court may review and modify the amount of compensation authorized under Subsection (b) of this section if the court finds that the amount is unreasonably low when considering the services rendered as guardian or temporary guardian.

(d) A finding of unreasonably low compensation may not be established under Subsection (c) of this section solely because the amount of compensation is less than the usual and customary charges of the person or entity serving as guardian or temporary guardian.

(e) The court, on application of an interested person or on its own motion, may deny a fee authorized under this section in whole, or in part, if:

(1) the court finds that the guardian or temporary guardian has not adequately performed the duties required of a guardian or temporary guardian under this chapter; or

(2) the guardian or temporary guardian has been removed for cause.

(f) Except as provided by Subsection (c) of this section for a fee that is determined by the court to be unreasonably low, the aggregate fee of the guardian of the person and guardian of the estate may not exceed an amount equal to five percent of the gross income of the ward's estate plus five percent of all money paid out of the estate.

(g) If the estate of a ward is insufficient to pay for the services of a private professional guardian or a licensed attorney serving as guardian of the ward's person, the court may authorize compensation for that guardian if funds in the county treasury are budgeted for that purpose.

(h) In this section:

(1) "Gross income" does not include Department of Veterans Affairs or Social Security benefits received by a ward.

(2) "Money paid out" does not include any money loaned, invested, or paid over on the settlement of the guardianship or a tax-motivated gift made by the ward.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 27, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 905, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 217, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 953, Sec. 1, eff. Sept. 1, 2001.

Sec. 665A. PAYMENT FOR PROFESSIONAL SERVICES. The court shall order the payment of a fee set by the court as compensation to the attorneys, mental health professionals, and interpreters appointed under Section 646 or 687 of this code, as applicable, to be taxed as costs in the case. If after examining the proposed ward's assets the court determines the proposed ward is unable to pay for services provided by an attorney, a mental health professional, or an interpreter appointed under Section 646 or 687 of this code, as applicable, the county is responsible for the cost of those services.

Added by Acts 1995, 74th Leg., ch. 1039, Sec. 28, eff. Sept. 1, 1995.

Sec. 665B. COMPENSATION OF CERTAIN ATTORNEYS. (a) A court that creates a guardianship for a ward under this chapter, on request of a person who filed an application to be appointed guardian of the proposed ward or for the appointment of another suitable person as guardian of the proposed ward, may authorize compensation of an attorney who represents the person who filed the application at the application hearing, regardless of whether the person is appointed the ward's guardian, from:

(1) available funds of the ward's estate; or

(2) the county treasury if:

(A) the ward's estate is insufficient to pay for the services provided by the attorney; and

(B) funds in the county treasury are budgeted for that purpose.

(b) The court may not authorize compensation under this section unless the court finds that the applicant acted in good faith and for just cause in the filing and prosecution of the application.

Added by Acts 1995, 74th Leg., ch. 1039, Sec. 28, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 905, Sec. 2, eff. Sept. 1, 1999.

Subsec. (a) amended by Acts 2003, 78th Leg., ch. 549, Sec. 10, eff. Sept. 1, 2003.

Sec. 665C. COMPENSATION FOR COLLECTION OF CLAIMS AND RECOVERY OF PROPERTY. (a) Except as provided by Subsection (b) of this section, a guardian of an estate may enter into a contract to convey, or may convey, a contingent interest in any property sought to be recovered, not exceeding one-third thereof for services of attorneys, subject only to the approval of the court in which the estate is being administered.

(b) A guardian of an estate may convey or contract to convey for services of attorneys a contingent interest that exceeds one-third of the property sought to be recovered under this section only on the approval of the court in which the estate is being administered. The court must approve a contract entered into or conveyance made under this section before an attorney performs any legal services. A contract entered into or conveyance made in violation of this section is void, unless the court ratifies or reforms the contract or documents relating to the conveyance to the extent necessary to cause the contract or conveyance to meet the requirements of this section.

(c) In approving a contract or conveyance under Subsection (a) or (b) of this section for services of an attorney, the court shall consider:

(1) the time and labor that will be required, the novelty and difficulty of the questions to be involved, and the skill that will be required to perform the legal services properly;

(2) the fee customarily charged in the locality for similar legal services;

(3) the value of property recovered or sought to be recovered by the personal representative under this section;

(4) the benefits to the estate that the attorney will be responsible for securing; and

(5) the experience and ability of the attorney who will be performing the services.

(d) On satisfactory proof to the court, a guardian of an estate is entitled to all necessary and reasonable expenses incurred by the guardian in collecting or attempting to collect a claim or debt owed to the estate or in recovering or attempting to recover property to which the estate has a title or claim.

Added by Acts 1995, 74th Leg., ch. 1039, Sec. 28, eff. Sept. 1, 1995.

Sec. 666. EXPENSES ALLOWED. A guardian is entitled to be

reimbursed from the guardianship estate for all necessary and reasonable expenses incurred in performing any duty as a guardian, including reimbursement for the payment of reasonable attorney's fees necessarily incurred by the guardian in connection with the management of the estate or any other guardianship matter.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 953, Sec. 2, eff. Sept. 1, 2001.

Sec. 667. EXPENSE ACCOUNT. All expense charges shall be:

(1) in writing, showing specifically each item of expense and the date of the expense;

(2) verified by affidavit of the guardian;

(3) filed with the clerk; and

(4) paid only if the payment is authorized by court order.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 953, Sec. 3, eff. Sept. 1, 2001.

Sec. 668. COSTS ADJUDGED AGAINST GUARDIAN. When costs are incurred because a guardian neglects to perform a required duty or if a guardian is removed for cause, the guardian and the sureties on the guardian's bond are liable for:

(1) costs of removal and other additional costs incurred that are not authorized expenditures under this chapter; and

(2) reasonable attorney's fees incurred in removing the guardian or in obtaining compliance regarding any statutory duty the guardian has neglected.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 669. COSTS AGAINST GUARDIANSHIP. (a) Except as provided by Subsection (b), in a guardianship matter, the cost of the proceeding, including the cost of the guardian ad litem or court visitor, shall be paid out of the guardianship estate, or, if the estate is insufficient to pay for the cost of the proceeding, the cost of the proceeding shall be paid out of the county treasury, and the judgment of the court shall be issued accordingly.

(b) If a court denies an application for the appointment of a guardian under this chapter based on the recommendation of a court investigator, the applicant shall pay the cost of the proceeding.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 29, eff. Sept. 1, 1995.

SUBPART I. DUTY AND RESPONSIBILITY OF COURT

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

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

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

(d) The judge shall notify the guardian and the sureties on the bond as provided by law. If damage or loss results to a guardianship or ward because of gross neglect of the judge to use reasonable diligence in the performance of the judge's duty under this section, the judge shall be liable on the judge's bond to those damaged by the judge's neglect.

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

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 77, Sec. 3, eff. Sept. 1, 1997.

Sec. 672. ANNUAL DETERMINATION WHETHER GUARDIANSHIP SHOULD BE CONTINUED, MODIFIED, OR TERMINATED. (a) A court in which a guardianship proceeding is pending shall review annually each guardianship in which the application to create the guardianship was filed after September 1, 1993, and may review annually any other guardianship to determine whether the guardianship should be continued, modified, or terminated.

(b) In reviewing a guardianship as provided by Subsection

(a) of this section, a statutory probate court may:

- (1) review any report prepared by a court investigator under Section 648A or 694A(c) of this code;
- (2) review any report prepared by a guardian ad litem under Section 694A(c) of this code;
- (3) review any report prepared by a court visitor under Section 648 of this code;
- (4) conduct a hearing; or
- (5) review an annual account prepared under Section 741 of this code or a report prepared under Section 743 of this code.

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

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

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

Added by Acts 1995, 74th Leg., ch. 1039, Sec. 30, eff. Sept. 1, 1995.

Subsec. (b) amended by Acts 2005, 79th Leg., ch. 200, Sec. 3, eff. Sept. 1, 2005.

SUBPART J. LIABILITY OF GUARDIAN

Sec. 673. LIABILITY OF GUARDIAN FOR CONDUCT OF WARD. A person is not liable to a third person solely because the person has been appointed guardian of a ward under this chapter.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Section heading amended by Acts 2005, 79th Leg., ch. 268, Sec. 3.07, eff. Sept. 1, 2005.

Sec. 674. IMMUNITY OF GUARDIANSHIP PROGRAM. A guardianship program is not liable for civil damages arising from an action taken or omission made by a person while providing guardianship services to a ward on behalf of the guardianship program, unless the action or omission:

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

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.08, eff. Sept. 1, 2005.

PART 3. APPOINTMENT AND QUALIFICATION OF GUARDIANS

SUBPART A. APPOINTMENT

Sec. 675. RIGHTS AND POWERS RETAINED BY WARD. An incapacitated person for whom a guardian is appointed retains all legal and civil rights and powers except those designated by court order as legal disabilities by virtue of having been specifically granted to the guardian.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 676. GUARDIANS OF MINORS. (a) Except as provided by Section 680 of this code, the selection of a guardian for a minor is governed by this section.

(b) If the parents live together, both parents are the natural guardians of the person of the minor children by the marriage, and one of the parents is entitled to be appointed guardian of the children's estates. If the parents disagree as to which parent should be appointed, the court shall make the appointment on the basis of which parent is better qualified to serve in that capacity. If one parent is dead, the survivor is the natural guardian of the person of the minor children and is entitled to be appointed guardian of their estates. The rights of parents who do not live together are equal, and the guardianship of their minor children shall be assigned to one or the other, considering only the best interests of the children.

(c) In appointing a guardian for a minor orphan:

(1) if the last surviving parent did not appoint a guardian, the nearest ascendant in the direct line of the minor is entitled to guardianship of both the person and the estate of the minor;

(2) if more than one ascendant exists in the same degree in the direct line, one ascendant shall be appointed, according to circumstances and considering the best interests of the minor;

(3) if the minor has no ascendant in the direct line, the nearest of kin shall be appointed, and if there are two or more

persons in the same degree of kinship, one shall be appointed, according to circumstances and considering the best interests of the minor; and

(4) if no relative of the minor is eligible to be guardian, or if no eligible person applies to be guardian, the court shall appoint a qualified person as guardian.

(d) Notwithstanding Subsection (b) of this section and Section 690 of this code, the surviving parent of a minor may by will or written declaration appoint any eligible person to be guardian of the person of the parent's minor children after the death of the parent or in the event of the parent's incapacity.

(e) After the death of the surviving parent of a minor or if the court finds the surviving parent is an incapacitated person, as appropriate, the court shall appoint the person designated in the will or declaration to serve as guardian of the person of the parent's minor children in preference to those otherwise entitled to serve as guardian under this chapter unless the court finds that the designated guardian is disqualified, is dead, refuses to serve, or would not serve the best interests of the minor children.

(f) On compliance with this chapter, an eligible person is also entitled to be appointed guardian of the children's estates after the death of the parent or in the event of the parent's incapacity.

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

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 304, Sec. 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 217, Sec. 4, eff. Sept. 1, 2001.

Sec. 677. GUARDIANS OF PERSONS OTHER THAN MINORS. (a) The court shall appoint a guardian for a person other than a minor according to the circumstances and considering the best interests of the ward. If the court finds that two or more eligible persons are equally entitled to be appointed guardian:

(1) the ward's spouse is entitled to the guardianship in preference to any other person if the spouse is one of the eligible persons;

(2) the eligible person nearest of kin to the ward is entitled to the guardianship if the ward's spouse is not one of the eligible persons; or

(3) the court shall appoint the eligible person who is best qualified to serve as guardian if:

(A) the persons entitled to serve under Subdivisions (1) and (2) of this section refuse to serve;

(B) two or more persons entitled to serve under Subdivision (2) of this section are related in the same degree of kinship to the ward; or

(C) neither the ward's spouse or any person related to the ward is an eligible person.

(b) The surviving parent of an adult individual who is an incapacitated person may by will or written declaration appoint an eligible person to be guardian of the person of the adult individual after the parent's death or in the event of the parent's incapacity if the parent is the guardian of the person of the adult individual.

(c) After the death of the surviving parent of an adult individual who is an incapacitated person or if the court finds the surviving parent becomes an incapacitated person after being appointed the individual's guardian, as appropriate, the court shall appoint the person designated in the will or declaration to serve as guardian in preference to those otherwise entitled to serve as guardian under this chapter unless the court finds that the designated guardian is disqualified, is dead, refuses to serve, or would not serve the best interests of the adult individual.

(d) On compliance with this chapter, the eligible person appointed under Subsection (c) of this section is also entitled to be appointed guardian of the adult individual's estate after the death of the individual's parent or in the event of the parent's incapacity if the individual's parent is the guardian of the individual's estate.

(e) The powers of a person appointed to serve as the designated guardian of the person or estate, or both, of an adult individual solely because of the incapacity of the individual's

surviving parent and in accordance with this section and Section 677A of this code terminate when a probate court enters an order finding that the surviving parent is no longer an incapacitated person and reappointing the surviving parent as the individual's guardian.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 304, Sec. 2, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 217, Sec. 5, eff. Sept. 1, 2001.

Sec. 677A. WRITTEN DECLARATIONS BY CERTAIN PARENTS TO APPOINT GUARDIANS FOR THEIR CHILDREN. (a) A written declaration appointing an eligible person to be guardian of the person of the parent's child under Section 676(d) or 677(b) of this code must be signed by the declarant and be:

(1) written wholly in the handwriting of the declarant; or
(2) attested to in the presence of the declarant by at least two credible witnesses 14 years of age or older who are not named as guardian or alternate guardian in the declaration.

(b) A declaration that is not written wholly in the handwriting of the declarant may be signed by another person for the declarant under the direction of and in the presence of the declarant.

(c) A declaration described by Subsection (a)(2) of this section may have attached a self-proving affidavit signed by the declarant and the witnesses attesting to the competence of the declarant and the execution of the declaration.

(d) The declaration and any self-proving affidavit may be filed with the court at any time after the application for appointment of a guardian is filed and before a guardian is appointed.

(e) If the designated guardian does not qualify, is dead, refuses to serve, resigns, or dies after being appointed guardian, or is otherwise unavailable to serve as guardian, the court shall appoint the next eligible designated alternate guardian named in the declaration. If the guardian and all alternate guardians do not qualify, are dead, refuse to serve, or later die or resign, the court shall appoint another person to serve as otherwise provided by this code.

(f) The declarant may revoke a declaration in any manner provided for the revocation of a will under Section 63 of this code, including the subsequent reexecution of the declaration in the manner required for the original declaration.

(g) A declaration and affidavit may be in any form adequate to clearly indicate the declarant's intention to designate a guardian for the declarant's child. The following form may, but need not, be used:

DECLARATION OF APPOINTMENT OF GUARDIAN FOR MY CHILDREN
IN THE EVENT OF MY DEATH OR INCAPACITY

I, _____, make this Declaration to appoint as guardian for my child or children, listed as follows, in the event of my death or incapacity:

(add blanks as appropriate)

I designate _____ to serve as guardian of the person of my (child or children), _____ as first alternate guardian of the person of my (child or children), _____ as second alternate guardian of the person of my (child or children), and _____ as third alternate guardian of the person of my (child or children).

I direct that the guardian of the person of my (child or children) serve (with or without) bond.

(If applicable) I designate _____ to serve as guardian of the estate of my (child or children), _____ as first alternate guardian of the estate of my (child or children), _____ as second alternate guardian of the estate of my (child or children), and _____ as third alternate guardian of the estate of my (child or children).

If any guardian or alternate guardian dies, does not qualify, or resigns, the next named alternate guardian becomes guardian of my (child or children).

Signed this _____ day of _____, 20__.

Declarant

Witness

Witness

SELF-PROVING AFFIDAVIT

Before me, the undersigned authority, on this date personally appeared the declarant, and _____ and _____ as witnesses, and all being duly sworn, the declarant said that the above instrument was his or her Declaration of Appointment of Guardian for the Declarant's Children in the Event of Declarant's Death or Incapacity and that the declarant had made and executed it for the purposes expressed in the declaration. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the declaration as witnesses, and that the declarant appeared to them to be of sound mind.

Declarant

Affiant

Affiant

Subscribed and sworn to before me by the above named declarant and affiants on this ____ day of _____, 20__.

Notary Public in and for the
State of Texas
My Commission expires: _____

(h) In this section, "self-proving affidavit" means an affidavit the form and content of which substantially complies with the requirements of Subsection (g) of this section. Added by Acts 1995, 74th Leg., ch. 304, Sec. 3, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 77, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1078, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 217, Sec. 6, eff. Sept. 1, 2001.

Sec. 677B. PROOF OF WRITTEN DECLARATION OF CERTAIN PARENTS TO DESIGNATE CHILDRENS' GUARDIAN. (a) In this section:

(1) "Declaration" means a written declaration of a person that:

(A) appoints a guardian for the person's child under Section 676(d) or 677(b) of this code; and

(B) satisfies the requirements of Section 677A of this code.

(2) "Self-proving affidavit" means an affidavit the form and content of which substantially complies with the requirements of Section 677A(g) of this code.

(3) "Self-proving declaration" includes a self-proving affidavit that is attached or annexed to a declaration.

(b) If a declaration is self-proved, the court may admit the declaration into evidence without the testimony of witnesses attesting to the competency of the declarant and the execution of the declaration. Additional proof of the execution of the declaration with the formalities and solemnities and under the circumstances required to make it a valid declaration is not necessary.

(c) At any time during the declarant's lifetime, a written declaration described by Section 677A(a)(1) of this code may be made self-proved in the same form and manner a will written wholly in the handwriting of a testator is made self-proved under Section 60 of this code.

(d) A properly executed and witnessed self-proving declaration and affidavit, including a declaration and affidavit described by Section 677A(c) of this code, are prima facie evidence that the declarant was competent at the time the declarant executed the declaration and that the guardian named in the declaration would serve the best interests of the ward.

(e) A written declaration described by Section 677A(a)(1) of this code that is not self-proved may be proved in the same manner a will written wholly in the handwriting of the testator is proved under Section 84 of this code.

(f) A written declaration described by Section 677A(a)(2) of this code that is not self-proved may be proved in the same manner an attested written will produced in court is proved under Section 84 of this code.

Added by Acts 2001, 77th Leg., ch. 217, Sec. 7, eff. Sept. 1, 2001.

Sec. 678. PRESUMPTION CONCERNING BEST INTEREST. It is

presumed not to be in the best interests of a ward to appoint a person as guardian of the ward if the person has been finally convicted of any sexual offense, sexual assault, aggravated assault, aggravated sexual assault, injury to a child, to an elderly individual, or to a disabled individual, abandoning or endangering a child, or incest.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 612, Sec. 1, eff. Aug. 28, 1995.

Sec. 679. DESIGNATION OF GUARDIAN BEFORE NEED ARISES. (a) A person other than an incapacitated person may designate by a written declaration persons to serve as guardian of the person of the declarant or the estate of the declarant if the declarant becomes incapacitated. The declaration must be signed by the declarant and be:

(1) written wholly in the handwriting of the declarant; or
(2) attested to in the presence of the declarant by at least two credible witnesses 14 years of age or older who are not named as guardian or alternate guardian in the declaration.

(b) A declarant may, in the declaration, disqualify named persons from serving as guardian of the declarant's person or estate, and the persons named may not be appointed guardian under any circumstances.

(c) A declaration that is not written wholly in the handwriting of a declarant may be signed by another person for the declarant under the direction of and in the presence of the declarant.

(d) A declaration described by Subsection (a)(2) of this section may have attached a self-proving affidavit signed by the declarant and the witnesses attesting to the competence of the declarant and the execution of the declaration.

(e) The declaration and any self-proving affidavit may be filed with the court at any time after the application for appointment of a guardian is filed and before a guardian is appointed.

(f) Unless the court finds that the person designated in the declaration to serve as guardian is disqualified or would not serve the best interests of the ward, the court shall appoint the person as guardian in preference to those otherwise entitled to serve as guardian under this code. If the designated guardian does not qualify, is dead, refuses to serve, resigns, or dies after being appointed guardian, or is otherwise unavailable to serve as guardian, the court shall appoint the next eligible designated alternate guardian named in the declaration. If the guardian and all alternate guardians do not qualify, are dead, refuse to serve, or later die or resign, the court shall appoint another person to serve as otherwise provided by this code.

(g) The declarant may revoke a declaration in any manner provided for the revocation of a will under Section 63 of this code, including the subsequent reexecution of the declaration in the manner required for the original declaration.

(h) If a declarant designates the declarant's spouse to serve as guardian under this section, and the declarant is subsequently divorced from that spouse before a guardian is appointed, the provision of the declaration designating the spouse has no effect.

(i) A declaration and affidavit may be in any form adequate to clearly indicate the declarant's intention to designate a guardian. The following form may, but need not, be used:

DECLARATION OF GUARDIAN IN THE EVENT OF LATER
INCAPACITY OR NEED OF GUARDIAN

I, _____, make this Declaration of Guardian, to operate if the need for a guardian for me later arises.

1. I designate _____ to serve as guardian of my person, _____ as first alternate guardian of my person, _____ as second alternate guardian of my person, and _____ as third alternate guardian of my person.

2. I designate _____ to serve as guardian of my estate, _____ as first alternate guardian of my estate, _____ as second alternate guardian of my estate, and _____ as third alternate guardian of my estate.

3. If any guardian or alternate guardian dies, does not qualify, or resigns, the next named alternate guardian becomes my guardian.

4. I expressly disqualify the following persons from serving

as guardian of my person: _____, _____, and _____.
5. I expressly disqualify the following persons from serving
as guardian of my estate: _____, _____, and _____.
Signed this ____ day of _____, 20__.

Declarant

Witness

Witness

SELF-PROVING AFFIDAVIT

Before me, the undersigned authority, on this date personally
appeared the declarant, and _____ and _____ as
witnesses, and all being duly sworn, the declarant said that the
above instrument was his or her Declaration of Guardian and that the
declarant had made and executed it for the purposes expressed in the
declaration. The witnesses declared to me that they are each 14
years of age or older, that they saw the declarant sign the
declaration, that they signed the declaration as witnesses, and
that the declarant appeared to them to be of sound mind.

Declarant

Affiant

Affiant

Subscribed and sworn to before me by the above named declarant and
affiants on this ____ day of _____, 20__.

Notary Public in and for the
State of Texas
My Commission expires:

(j) In this section, "self-proving affidavit" means an
affidavit the form and content of which substantially complies with
the requirements of Subsection (i) of this section.
Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2001, 77th Leg., ch. 217, Sec. 8, eff. Sept. 1,
2001.

Sec. 679A. PROOF OF WRITTEN DECLARATION TO DESIGNATE
GUARDIAN BEFORE NEED ARISES. (a) In this section:

(1) "Declaration" means a written declaration of a person
that:

(A) designates another person to serve as a guardian of the
person or estate of the declarant; and

(B) satisfies the requirements of Section 679 of this code.

(2) "Self-proving affidavit" means an affidavit the form
and content of which substantially complies with the requirements
of Section 679(i) of this code.

(3) "Self-proving declaration" includes a self-proving
affidavit that is attached or annexed to a declaration.

(b) If a declaration is self-proved, the court may admit the
declaration into evidence without the testimony of witnesses
attesting to the competency of the declarant and the execution of
the declaration. Additional proof of the execution of the
declaration with the formalities and solemnities and under the
circumstances required to make it a valid declaration is not
necessary.

(c) At any time during the declarant's lifetime, a written
declaration described by Section 679(a)(1) of this code may be made
self-proved in the same form and manner a will written wholly in the
handwriting of a testator is made self-proved under Section 60 of
this code.

(d) A properly executed and witnessed self-proving
declaration and affidavit, including a declaration and affidavit
described by Section 679(d) of this code, are prima facie evidence
that the declarant was competent at the time the declarant executed
the declaration and that the guardian named in the declaration
would serve the best interests of the ward.

(e) A written declaration described by Section 679(a)(1) of
this code that is not self-proved may be proved in the same manner a
will written wholly in the handwriting of the testator is proved
under Section 84 of this code.

(f) A written declaration described by Section 679(a)(2) of
this code that is not self-proved may be proved in the same manner
an attested written will produced in court is proved under Section

84 of this code.

Added by Acts 2001, 77th Leg., ch. 217, Sec. 9, eff. Sept. 1, 2001.

Sec. 680. SELECTION OF GUARDIAN BY MINOR. (a) When an application is filed for the guardianship of the person or estate, or both, of a minor at least 12 years of age, the minor, by writing filed with the clerk, may choose the guardian if the court approves the choice and finds that the choice is in the best interest of the minor.

(b) A minor at least 12 years of age may select another guardian of either the minor's person or estate, or both, if the minor has a guardian appointed by the court or the minor has a guardian appointed by will or written declaration of the parent of the minor and that guardian dies, resigns, or is removed from guardianship. If the court is satisfied that the person selected is suitable and competent and that the appointment of the person is in the best interest of the minor, it shall make the appointment and revoke the letters of guardianship of the former guardian. The minor shall make the selection by filing an application in open court in person or by attorney.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 31, eff. Sept. 1, 1995.

Sec. 681. PERSONS DISQUALIFIED TO SERVE AS GUARDIANS. A person may not be appointed guardian if the person is:

- (1) a minor;
- (2) a person whose conduct is notoriously bad;
- (3) an incapacitated person;
- (4) a person who is a party or whose parent is a party to a lawsuit concerning or affecting the welfare of the proposed ward, unless the court:

(A) determines that the lawsuit claim of the person who has applied to be appointed guardian is not in conflict with the lawsuit claim of the proposed ward; or

(B) appoints a guardian ad litem to represent the interests of the proposed ward throughout the litigation of the ward's lawsuit claim;

- (5) a person indebted to the proposed ward unless the person pays the debt before appointment;

- (6) a person asserting a claim adverse to the proposed ward or the proposed ward's property, real or personal;

- (7) a person who, because of inexperience, lack of education, or other good reason, is incapable of properly and prudently managing and controlling the ward or the ward's estate;

- (8) a person, institution, or corporation found unsuitable by the court;

- (9) a person disqualified in a declaration made under Section 679 of this code; or

- (10) a nonresident person who has not filed with the court the name of a resident agent to accept service of process in all actions or proceedings relating to the guardianship.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 32, eff. Sept. 1, 1995.

Sec. 682. APPLICATION; CONTENTS. Any person may commence a proceeding for the appointment of a guardian by filing a written application in a court having jurisdiction and venue. The application must be sworn to by the applicant and state:

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

- (2) the name, relationship, and address of the person the applicant desires to have appointed as guardian;

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

- (4) the nature and degree of the alleged incapacity, the specific areas of protection and assistance requested, and the limitation of rights requested to be included in the court's order of appointment;

- (5) the facts requiring that a guardian be appointed and the interest of the applicant in the appointment;

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

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

- (8) the approximate value and description of the proposed ward's property, including any compensation, pension, insurance,

or allowance to which the proposed ward may be entitled;

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

(10) if the proposed ward is a minor and if known by the applicant:

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

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

(C) if each of the proposed ward's parents and siblings are deceased, the names and addresses of the proposed ward's next of kin who are adults;

(11) if the proposed ward is a minor, whether the minor was the subject of a legal or conservatorship proceeding within the preceding two-year period and, if so, the court involved, the nature of the proceeding, and the final disposition, if any, of the proceeding;

(12) if the proposed ward is an adult and if known by the applicant:

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

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

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

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

(E) if the proposed ward's spouse and each of the proposed ward's parents, siblings, and children are deceased, or, if there is no spouse, parent, adult sibling, or adult child, the names and addresses of the proposed ward's next of kin who are adults;

(13) facts showing that the court has venue over the proceeding; and

(14) if applicable, that the person whom the applicant desires to have appointed as a guardian is a private professional guardian who is certified under Subchapter C, Chapter 111, Government Code, and has complied with the requirements of Section 697 of this code.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 77, Sec. 5, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1376, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 829, Sec. 4, eff. Sept. 1, 1999.

Amended by Acts 2003, 78th Leg., ch. 549, Sec. 11, eff. Sept. 1, 2003.

Subd. (14) amended by Acts 2005, 79th Leg., ch. 268, Sec. 3.09, eff. Sept. 1, 2005.

Sec. 682A. APPLICATION FOR APPOINTMENT OF GUARDIAN FOR CERTAIN PERSONS. (a) If a minor is a person who, because of incapacity, will require a guardianship after the ward is no longer a minor, a person may file an application under Section 682 of this code for the appointment of a guardian of the person or the estate, or both, of the proposed ward not earlier than the 180th day before the proposed ward's 18th birthday. If the application is heard before the proposed ward's 18th birthday, a guardianship created under this section may not take effect and the person appointed guardian may not give a bond or take the oath as required under Section 700 or 702 of this code until the proposed ward's 18th birthday.

(b) Notwithstanding Section 694(b) of this code, the guardianship of the person of a minor who is the subject of an application for the appointment of a guardian of the person filed under Subsection (a) of this section is settled and closed when:

(1) the court, after a hearing on the application, determines that the appointment of a guardian of the person for the proposed ward is not necessary; or

(2) the guardian appointed by the court after a hearing on the application has qualified under Section 699 of this code.

Added by Acts 1999, 76th Leg., ch. 904, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 217, Sec. 10, eff. Sept. 1, 2001.

Sec. 683. COURT'S INITIATION OF GUARDIANSHIP

PROCEEDINGS. (a) If a court has probable cause to believe that a person domiciled or found in the county in which the court is located is an incapacitated person, and the person does not have a guardian in this state, the court shall appoint a guardian ad litem or court investigator to investigate and file an application for the appointment of a guardian of the person or estate, or both, of the person believed to be incapacitated.

(b) To establish probable cause under this section, 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 683A of this code; or

(2) a written letter or certificate from a physician who has examined the person believed to be incapacitated that satisfies the requirements of Section 687(a) of this code, except that the letter must be dated not earlier than the 120th day before the date of the filing of an application under Subsection (a) of this section and be based on an examination the physician performed not earlier than the 120th day before that date.

(c) A court that creates a guardianship for a ward under this chapter may authorize compensation of a guardian ad litem who files an application under Subsection (a) of this section from available funds of the ward's estate. If after examining the ward's assets the court determines the ward is unable to pay for services provided by the guardian ad litem, the court may authorize compensation from the county treasury.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 905, Sec. 3, eff. Sept. 1, 1999.

Sec. 683A. INFORMATION LETTER. An information letter under Section 683(b)(1) of this code about a person believed to be incapacitated may:

(1) include the name, address, telephone number, county of residence, and date of birth of the person;

(2) state whether the residence of the person is a private residence, health care facility, or other type of residence;

(3) describe the relationship between the interested person and the person;

(4) contain the names and telephone numbers of any known friends and relatives of the person;

(5) state whether a guardian of the person or estate of the person has been appointed in this state;

(6) state whether the person has executed a power of attorney and, if so, the designee's name, address, and telephone number;

(7) describe any property of the person, including the estimated value of that property;

(8) list any amount and source of monthly income of the person; and

(9) describe the nature and degree of the person's alleged incapacity and include a statement of whether the person is in imminent danger of serious impairment to the person's physical health, safety, or estate.

Added by Acts 1999, 76th Leg., ch. 905, Sec. 4, eff. Sept. 1, 1999.

Sec. 684. FINDINGS REQUIRED. (a) Before appointing a guardian, the court must find by clear and convincing evidence that:

(1) the proposed ward is an incapacitated person;

(2) it is in the best interest of the proposed ward to have the court appoint a person as guardian of the proposed ward; and

(3) the rights of the proposed ward or the proposed ward's property will be protected by the appointment of a guardian.

(b) Before appointing a guardian, the court must find by a preponderance of the evidence that:

(1) the court has venue of the case;

(2) the person to be appointed guardian is eligible to act as guardian and is entitled to appointment, or, if no eligible person entitled to appointment applies, the person appointed is a proper person to act as guardian;

(3) if a guardian is appointed for a minor, the guardianship is not created for the primary purpose of enabling the minor to establish residency for enrollment in a school or school district for which the minor is not otherwise eligible for enrollment; and

(4) the proposed ward is totally without capacity as provided by this code to care for himself or herself and to manage

the individual's property, or the proposed ward lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage the individual's property.

(c) The court may not grant an application to create a guardianship unless the applicant proves each element required by this code. A determination of incapacity of an adult proposed ward, other than a person who must have a guardian appointed to receive funds due the person from any governmental source, must be evidenced by recurring acts or occurrences within the preceding six-month period and not by isolated instances of negligence or bad judgment.

(d) A court may not appoint a guardian of the estate of a minor when a payment of claims is made under Section 887 of this code.

(e) A certificate of the executive head or a representative of the bureau, department, or agency of the government, to the effect that the appointment of a guardian is a condition precedent to the payment of any funds due the proposed ward from that governmental entity, is prima facie evidence of the necessity for the appointment of a guardian.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 33, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1376, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 379, Sec. 5, eff. Sept. 1, 1999.

Sec. 685. HEARING FOR APPOINTMENT OF GUARDIAN; RIGHT TO JURY TRIAL. (a) A proposed ward must be present at a hearing to appoint a guardian unless the court, on the record or in the order, determines that a personal appearance is not necessary. The court may close the hearing if the proposed ward or the proposed ward's counsel requests a closed hearing.

(b) The proposed ward is entitled, on request, to a jury trial.

(c) At the hearing, the court shall:

(1) inquire into the ability of any allegedly incapacitated adult person to feed, clothe, and shelter himself or herself, to care for the individual's own physical health, and to manage the individual's property or financial affairs;

(2) ascertain the age of any proposed ward who is a minor;

(3) inquire into the governmental reports for any person who must have a guardian appointed to receive funds due the person from any governmental source; and

(4) inquire into the qualifications, abilities, and capabilities of the person seeking to be appointed guardian.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 34, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 379, Sec. 6, eff. Sept. 1, 1999.

Sec. 686. USE OF RECORDS IN HEARING TO APPOINT GUARDIAN. (a) Before a hearing may be held for the appointment of a guardian, current and relevant medical, psychological, and intellectual testing records of the proposed ward must be provided to the attorney ad litem appointed to represent the proposed ward unless:

(1) the proposed ward is a minor or a person who must have a guardian appointed to receive funds due the person from any governmental source; or

(2) the court makes a finding on the record that no current or relevant records exist and examining the proposed ward for the purpose of creating the records is impractical.

(b) Current medical, psychological, and intellectual testing records are a sufficient basis for a determination of guardianship.

(c) The findings and recommendations contained in the medical, psychological, and intellectual testing records are not binding on the court.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 379, Sec. 7, eff. Sept. 1, 1999.

Sec. 687. EXAMINATIONS AND REPORTS. (a) The court may not grant an application to create a guardianship for an incapacitated person, other than a minor, person whose alleged incapacity is mental retardation, 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 licensed in this state that is dated not earlier than the 120th day before the date of the filing of the application and based on an examination the physician performed not

earlier than the 120th day before the date of the filing of the application. The letter or certificate must:

(1) describe the nature and degree of incapacity, including the medical history if reasonably available;

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

(3) 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 person's physical or mental health;

(4) state whether any current medication affects the demeanor of the proposed ward or the proposed 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.

(b) Except as provided by Subsection (c) of this section, if the court determines it is necessary, the court may appoint the necessary physicians to examine the proposed ward. The court must make its determination with respect to the necessity for a physician'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. A physician who examines the proposed ward, other than a physician or psychologist who examines the proposed ward under Subsection (c) of this section, shall make available to an attorney ad litem appointed to represent the proposed ward, for inspection, a written letter or certificate from the physician that complies with the requirements of Subsection (a) of this section.

(c) If the basis of the proposed ward's alleged incapacity is mental retardation, the proposed ward shall be examined by a physician or psychologist licensed in this state or certified by the Texas Department of Mental Health and Mental Retardation to perform the examination, unless there is written documentation filed with the court that shows that the proposed ward has been examined according to the rules adopted by the Texas Department of Mental Health and Mental Retardation not earlier than 24 months before the date of a hearing to appoint a guardian for the proposed ward. The physician or psychologist shall conduct the examination according to the rules adopted by the Texas Department of Mental Health and Mental Retardation and shall submit written findings and recommendations to the court.

Added by Acts 1995, 74th Leg., ch. 1039, Sec. 35, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 379, Sec. 8, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1174, Sec. 3, eff. Sept. 1, 2001. Subsec. (c) amended by Acts 2003, 78th Leg., ch. 549, Sec. 12, eff. Sept. 1, 2003.

Sec. 689. PREFERENCE OF WARD. Before appointing a guardian, the court shall make a reasonable effort to consider the incapacitated person's preference of the person to be appointed guardian and, to the extent not inconsistent with other provisions of this chapter, shall give due consideration to the preference indicated by the incapacitated person.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 690. PERSONS APPOINTED GUARDIAN. Only one person may be appointed as guardian of the person or estate, but one person may be appointed guardian of the person and another of the estate, if it is in the best interest of the ward. Nothing in this section prohibits the joint appointment of a husband and wife, of joint managing conservators, or of coguardians appointed under the laws of a jurisdiction other than this state.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 36, eff. Sept. 1, 1995.

Sec. 692. DISMISSAL OF APPLICATION. If it is found that an adult person possesses the capacity to care for himself or herself and to manage the individual's property as would a reasonably prudent person, the court shall dismiss the application for guardianship.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 38, eff. Sept. 1, 1995.

Sec. 693. ORDER OF COURT. (a) If it is found that the proposed ward is totally without capacity as provided by this code

to care for himself or herself and to manage the individual's property, the court may appoint a guardian of the individual's person or estate, or both, with full authority over the incapacitated person except as provided by law. An order appointing a guardian under this subsection must contain findings of fact and specify:

(1) the information required by Subsection (c) of this section;

(2) that the guardian has full authority over the incapacitated person; and

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to expend for the education and maintenance of the person under Section 776 of this code.

(b) If it is found that the person lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage the individual's property, the court may appoint a guardian with limited powers and permit the individual to care for himself or herself or to manage the individual's property commensurate with the individual's ability. An order appointing a guardian under this subsection must contain findings of fact and specify:

(1) the information required by Subsection (c) of this section;

(2) the specific powers, limitations, or duties of the guardian with respect to the care of the person or the management of the person's property by the guardian; and

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to expend for the education and maintenance of the person under Section 776 of this code.

(c) The order of the court appointing a guardian must specify:

(1) the name of the person appointed;

(2) the name of the ward;

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

(4) the amount of any bond required;

(5) if it is a guardianship of the estate and the court deems an appraisal is necessary, one or more but not more than three disinterested persons to appraise the estate and to return the appraisement to the court; and

(6) that the clerk will issue letters of guardianship to the person appointed when the person has qualified according to law.

(d) An order appointing a guardian may not duplicate or conflict with the powers and duties of any other guardian.

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

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 39, eff. Sept. 1, 1995.

Sec. 694. TERM OF APPOINTMENT OF GUARDIAN. (a) Unless otherwise discharged as provided by law, a guardian remains in office until the estate is closed.

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

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

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

(3) is no longer a minor; or

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

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

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

(e) If a nonresident guardian of a nonresident ward qualifies as guardian under this chapter, the guardianship of any

resident guardian may be terminated.

(f) Repealed by Acts 1999, 76th Leg., ch. 379, Sec. 10, eff. Sept. 1, 1999.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 40, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 379, Sec. 9, 10, eff. Sept. 1, 1999.

Sec. 694A. COMPLETE RESTORATION OF WARD'S CAPACITY OR MODIFICATION OF GUARDIANSHIP. (a) A ward or any person interested in the ward's welfare may file a written application with the court for an order:

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

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

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

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

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

(b) A ward may make a request for an order under this section by informal letter to the court. A person who knowingly interferes with the transmission of the request to the court may be adjudged guilty of contempt of court.

(c) On receipt of an informal letter under Subsection (b) of this section, the court shall appoint the court investigator or a guardian ad litem to investigate the circumstances of the ward, including any circumstances alleged in the informal letter, to determine whether the ward is no longer an incapacitated person or whether a modification of the guardianship is necessary. The court investigator or guardian ad litem shall file with the court a report of the investigation's findings and conclusions and, if the court investigator or the guardian ad litem determines that it is in the best interest of the ward to terminate or modify the guardianship, the court investigator or guardian ad litem, as appropriate, shall file an application under Subsection (a) of this section on the ward's behalf. A guardian ad litem appointed under this subsection may also be appointed by the court to serve as attorney ad litem under Section 694C of this code.

(d) When an application is filed under this section, citation shall be served on the ward's guardian and on the ward if the ward is not the applicant.

(e) Except as otherwise provided by the court, on good cause shown by the applicant, a person may not reapply for complete restoration of a ward's capacity or modification of a ward's guardianship before the first anniversary of the date of the hearing on the last preceding application.

Added by Acts 1995, 74th Leg., ch. 1039, Sec. 41, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 829, Sec. 5, eff. Sept. 1, 1999.

Subsec. (c) amended by Acts 2005, 79th Leg., ch. 200, Sec. 4, eff. Sept. 1, 2005.

Sec. 694B. CONTENTS OF APPLICATION. An application filed under Section 694A of this code must be sworn to by the applicant and must:

(1) contain the name, sex, date of birth, and address of the ward;

(2) contain the name and address of any person serving as guardian of the person of the ward on the date the application is filed;

(3) contain the name and address of any person serving as guardian of the estate of the ward on the date the application is filed;

(4) state the nature and description of the ward's guardianship;

(5) state the specific areas of protection and assistance and any limitation of rights that exist;

(6) state whether the relief being sought is:

(A) a restoration of the ward's capacity because the ward is no longer an incapacitated person;

(B) the granting of additional powers or duties to the guardian; or

(C) the limitation of powers granted to or duties performed by the guardian;

(7) if the relief being sought under the application is described by Subdivision (6)(B) or (C) of this section, state:

(A) the nature and degree of the ward's incapacity;

(B) the specific areas of protection and assistance to be provided to the ward and requested to be included in the court's order; and

(C) any limitation of the ward's rights requested to be included in the court's order;

(8) state the approximate value and description of the ward's property, including any compensation, pension, insurance, or allowance to which the ward is or may be entitled; and

(9) if the ward is 60 years of age or older, contain the names and addresses, to the best of the applicant's knowledge, of the ward's spouse, siblings, and children or, if there is no known spouse, sibling, or child, the names and addresses of the ward's next of kin.

Added by Acts 1999, 76th Leg., ch. 829, Sec. 6, eff. Sept. 1, 1999.

Sec. 694C. APPOINTMENT OF ATTORNEY AD LITEM. (a) 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.

(b) Unless otherwise provided by the court, an attorney ad litem appointed under this section shall represent the ward only for purposes of the restoration or modification proceeding.

Added by Acts 1999, 76th Leg., ch. 829, Sec. 6, eff. Sept. 1, 1999.

Sec. 694D. HEARING. (a) At a hearing on an application for complete restoration of a ward's capacity or modification of a ward's guardianship, the court shall consider only evidence regarding the ward's mental or physical capacity at the time of the hearing that is relevant to the restoration of capacity or modification of the guardianship, as appropriate.

(b) The party who filed the application has the burden of proof at the hearing.

Added by Acts 1999, 76th Leg., ch. 829, Sec. 6, eff. Sept. 1, 1999.

Sec. 694E. FINDINGS REQUIRED. (a) Before ordering the settlement and closing of the guardianship under an application filed under Section 694A of this code, the court must find by a preponderance of the evidence that the ward is no longer partially or fully incapacitated.

(b) Before granting additional powers to the guardian or requiring the guardian to perform additional duties under an application filed under Section 694A of this code, the court must find by a preponderance of the evidence that the current nature and degree of the ward's incapacity warrants a modification of the guardianship and that some or all of the ward's rights need to be further restricted.

(c) Before limiting the powers granted to or duties required to be performed by the guardian under an application filed under Section 694A of this code, the court must find by a preponderance of the evidence that the current nature and degree of the ward's incapacity warrants a modification of the guardianship and that some of the ward's rights need to be restored.

Added by Acts 1999, 76th Leg., ch. 829, Sec. 6, eff. Sept. 1, 1999.

Sec. 694F. EXAMINATIONS AND REPORTS RELATING TO COMPLETE RESTORATION OF WARD'S CAPACITY OR MODIFICATION OF GUARDIANSHIP. (a) 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 694A of this code unless, in addition to other requirements prescribed by this code, the applicant presents to the court a written letter or certificate from a physician licensed in this state that is dated not earlier than the 120th day before the date of the filing of the application or dated after the date on which the application was filed but before the date of the hearing. The letter or certificate 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 to provide food, clothing, and shelter for himself or herself, to care for the ward's own physical health, and to manage the financial affairs of the ward;

(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 person's physical or mental health;

(4) state whether any current medication affects the demeanor of the ward 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.

(b) If the court determines it is necessary, the court may appoint the necessary physicians to examine the ward in the same manner and to the same extent as a ward is examined by a physician under Section 687 of this code.

Added by Acts 1999, 76th Leg., ch. 829, Sec. 6, eff. Sept. 1, 1999.

Sec. 694G. ORDER OF COMPLETE RESTORATION OF 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:

(1) the information required by Section 694J of this code;

(2) that the ward is no longer an incapacitated person;

(3) that there is no further need for a guardianship of the person or estate of the ward;

(4) that the guardian is required to:

(A) immediately settle the guardianship in accordance with this chapter; and

(B) deliver all of the remaining guardianship estate to the ward; and

(5) that the clerk shall revoke letters of guardianship when the guardianship is finally settled and closed.

Added by Acts 1999, 76th Leg., ch. 829, Sec. 6, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 484, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1174, Sec. 4, eff. Sept. 1, 2001.

Sec. 694H. MODIFICATION OF GUARDIANSHIP. If the court finds that a guardian's powers or duties should be expanded or limited, the order modifying the guardianship must contain findings of fact and specify:

(1) the information required by Section 694J of this code;

(2) the specific powers, limitations, or duties of the guardian with respect to the care of the ward or the management of the property of the ward, as appropriate;

(3) the specific areas of protection and assistance to be provided to the ward;

(4) any limitation of the ward's rights; and

(5) that the clerk shall modify the letters of guardianship to the extent applicable to conform to the order.

Added by Acts 1999, 76th Leg., ch. 829, Sec. 6, eff. Sept. 1, 1999.

Sec. 694I. DISMISSAL OF APPLICATION. If the court finds that a modification of the ward's guardianship is not necessary, including that the ward's capacity has not been restored, the court shall dismiss the application and enter an order that contains findings of fact and specifies:

(1) the information required by Section 694J of this code; and

(2) that the powers, limitations, or duties of the guardian with respect to the care of the ward or the management of the ward's property will remain unchanged.

Added by Acts 1999, 76th Leg., ch. 829, Sec. 6, eff. Sept. 1, 1999.

Sec. 694J. CONTENTS OF ORDER. (a) A court order entered with respect to a request made under Section 694A of this code to completely restore a ward's capacity or modify a ward's guardianship must:

(1) contain the name of the guardian;

(2) contain the name of the ward; and

(3) state whether the type of guardianship being addressed at the proceeding is a:

(A) guardianship of the person;

(B) guardianship of the estate; or

(C) guardianship of both the person and the estate.

(b) In an order described by this section, the court may not grant a power to a guardian or require the guardian to perform a duty that is a power granted to or a duty required to be performed by another guardian.

Added by Acts 1999, 76th Leg., ch. 829, Sec. 6, eff. Sept. 1, 1999.

Sec. 694K. ATTORNEY RETAINED ON WARD'S BEHALF. (a) A ward

may retain an attorney for a proceeding involving the complete restoration of the ward's capacity or modification of the ward's guardianship.

(b) The court may order that compensation for services provided by an attorney retained under this section be paid from funds in the ward's estate only if the court finds that the attorney had a good-faith belief that the ward had the capacity necessary to retain the attorney's services.

Added by Acts 1999, 76th Leg., ch. 829, Sec. 6, eff. Sept. 1, 1999.

Sec. 695. APPOINTMENT OF SUCCESSOR GUARDIAN. (a) If a guardian dies, resigns, or is removed, the court may, on application and on service of notice as directed by the court, appoint a successor guardian.

(b) A successor guardian has the powers and rights and is subject to all of the duties of the preceding guardian.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 695A. SUCCESSOR GUARDIANS FOR WARDS OF GUARDIANSHIP PROGRAMS OR GOVERNMENTAL ENTITIES. (a) If a guardianship program or governmental entity serving as a guardian for a ward under this chapter becomes aware of a family member or friend of the ward or any other interested person who is willing and able to serve as the ward's successor guardian, the program or entity shall notify the court in which the guardianship is pending of the individual's willingness and ability.

(a-1) If, while serving as a guardian for a ward under this chapter, the Department of Aging and Disability Services becomes aware of a guardianship program or private professional guardian willing and able to serve as the ward's successor guardian and the department is not aware of a family member or friend of the ward or any other interested person who is willing and able to serve as the ward's successor guardian, the department shall notify the court in which the guardianship is pending of the guardianship program's or private professional guardian's willingness and ability to serve.

(b) When the court is notified of the existence of a proposed successor guardian under Subsection (a) of this section or the court otherwise becomes aware of a family member, friend, or any other interested person who is willing and able to serve as a successor guardian for a ward of a guardianship program or governmental entity, the court shall determine whether the proposed successor guardian is qualified to serve under this chapter as the ward's successor guardian.

(c) If the court finds under Subsection (b) of this section that the proposed successor guardian for a ward is not disqualified from being appointed as the ward's successor guardian under Section 681 of this code and that the appointment is in the ward's best interests, the guardianship program or governmental entity serving as the ward's guardian or the court, on the court's own motion, may file an application to appoint the individual as the ward's successor guardian. Service of notice on an application filed under this subsection shall be made as directed by the court.

Added by Acts 1999, 76th Leg., ch. 906, Sec. 1, eff. Sept. 1, 1999.

Subsec. (a-1) added by Acts 2005, 79th Leg., ch. 268, Sec. 3.10, eff. Sept. 1, 2005.

Sec. 696. APPOINTMENT OF PRIVATE PROFESSIONAL GUARDIANS. A court may not appoint a private professional guardian to serve as a guardian or permit a private professional guardian to continue to serve as a guardian under this code if the private professional guardian:

(1) has not complied with the requirements of Section 697 of this code; or

(2) is not certified as provided by Section 697B of this code.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 2005, 79th Leg., ch. 268, Sec. 3.11, eff. Sept. 1, 2005.

Sec. 696A. APPOINTMENT OF PUBLIC GUARDIANS. (a) An individual employed by or contracting with a guardianship program must be certified as provided by Section 697B of this code to provide guardianship services to a ward of the guardianship program.

(b) An employee of the Department of Aging and Disability Services must be certified as provided by Section 697B of this code to provide guardianship services to a ward of the department.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.12, eff. Sept. 1, 2005.

Sec. 696B. APPOINTMENT OF FAMILY MEMBERS OR FRIENDS. A family member or friend of an incapacitated person is not required to be certified under Subchapter C, Chapter 111, Government Code, or any other law to serve as the person's guardian. Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.12, eff. Sept. 1, 2005.

Sec. 697. REGISTRATION OF PRIVATE PROFESSIONAL GUARDIANS. (a) A private professional guardian must apply annually to the clerk of the county having venue over the proceeding for the appointment of a guardian for a certificate of registration. The application must include a sworn statement containing the following information concerning a private professional guardian or each person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian:

- (1) educational background and professional experience;
- (2) three or more professional references;
- (3) the names of all of the wards the private professional guardian or person is or will be serving as a guardian;
- (4) the aggregate fair market value of the property of all wards that is being or will be managed by the private professional guardian or person;
- (5) place of residence, business address, and business telephone number; and
- (6) whether the private professional guardian or person has ever been removed as a guardian by the court or resigned as a guardian in a particular case, and, if so, a description of the circumstances causing the removal or resignation, and the style of the suit, the docket number, and the court having jurisdiction over the proceeding.

(b) The application must be accompanied by a nonrefundable fee set by the clerk in an amount necessary to cover the cost of administering this section.

(c) The term of the registration begins on the date that the requirements are met and extends through December 31 of the initial year. After the initial year of registration, the term of the registration begins on January 1 and ends on December 31 of each year. A renewal application must be completed during December of the year preceding the year for which the renewal is requested.

(d) The clerk shall bring the information received under this section to the judge's attention for review. The judge shall use the information only in determining whether to appoint, remove, or continue the appointment of a private professional guardian.

(e) Not later than February 1 of each year, the clerk shall submit to the Guardianship Certification Board and the Health and Human Services Commission the names and business addresses of private professional guardians who have satisfied the registration requirements under this section during the preceding year.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1116, Sec. 2, eff. Sept. 1, 1999.

Subsecs. (a), (c), (e) amended by Acts 2005, 79th Leg., ch. 268, Sec. 3.13, eff. Sept. 1, 2005.

Sec. 697A. LIST OF CERTAIN PUBLIC GUARDIANS MAINTAINED BY COUNTY CLERKS. (a) Each guardianship program operating in a county shall submit annually to the county clerk a statement containing the name, address, and telephone number of each individual employed by or volunteering or contracting with the program to provide guardianship services to a ward or proposed ward of the program.

(b) The Department of Aging and Disability Services, if the department files an application for and is appointed to serve as guardian for one or more incapacitated persons residing in the county as provided by Subchapter E, Chapter 161, Human Resources Code, shall submit annually to the county clerk the information required under Subsection (a) of this section for each department employee who is or will be providing guardianship services in the county on the department's behalf.

(c) Not later than February 1 of each year, the county clerk shall submit to the Guardianship Certification Board the information received under this section during the preceding year. Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.14, eff. Sept. 1, 2005.

Sec. 697B. CERTIFICATION REQUIREMENT FOR PRIVATE PROFESSIONAL GUARDIANS AND PUBLIC GUARDIANS. (a) The following persons must be certified under Subchapter C, Chapter 111,

Government Code:

- (1) an individual who is a private professional guardian;
- (2) an individual who will represent the interests of a ward as a guardian on behalf of a private professional guardian;
- (3) an individual providing guardianship services to a ward of a guardianship program on the program's behalf, except as provided by Subsection (d) of this section; and
- (4) an employee of the Department of Aging and Disability Services providing guardianship services to a ward of the department.

(b) A person whose certification has expired must obtain a new certification under Subchapter C, Chapter 111, Government Code, to be allowed to provide or continue to provide guardianship services to a ward under this code.

(c) The court shall notify the Guardianship Certification Board if the court becomes aware of a person who is not complying with the terms of a certification issued under Subchapter C, Chapter 111, Government Code, or with the standards and rules adopted under that subchapter.

(d) An individual volunteering with a guardianship program is not required to be certified as provided by this section to provide guardianship services on the program's behalf.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.14, eff. Sept. 1, 2005.

Sec. 698. ACCESS TO CRIMINAL HISTORY RECORDS. (a) The clerk of the county having venue over 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) an employee of the Department of Aging and Disability Services who is or will be providing guardianship services to a ward of the department.

(b) The criminal history record information obtained under this section is for the exclusive use of the court and is privileged and confidential. 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 clerk may destroy the criminal history information records after the records are used for the purposes authorized by this section.

(c) The court shall use the information obtained under this section only in determining whether to appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or the Department of Aging and Disability Services.

(d) A person commits an offense if the person releases or discloses any information received under this section without the authorization prescribed by Subsection (b) of this section. An offense under this subsection is a Class A misdemeanor.

(e) The clerk may charge a reasonable fee sufficient to recover the costs of obtaining criminal history information records authorized by Subsection (a) of this section.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1116, Sec. 3, eff. Sept. 1, 1999.

Subsecs. (a), (c) amended by Acts 2005, 79th Leg., ch. 268, Sec. 3.15, eff. Sept. 1, 2005.

SUBPART B. QUALIFICATION

Sec. 699. HOW GUARDIANS QUALIFY. A guardian is deemed to have duly qualified when the guardian has taken and filed the oath required under Section 700 of this code, has made the required bond, and has filed it with the clerk, and has the bond approved by the judge. A guardian who is not required to make bond, is deemed to have duly qualified when the guardian has taken and filed the

required oath.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 700. OATH OF GUARDIAN. (a) The guardian shall take an oath to discharge faithfully the duties of guardian for the person or estate, or both, of a ward.

(b) A representative of the Department of Aging and Disability Services shall take the oath required by Subsection (a) of this section if the department is appointed guardian.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 101, eff. Sept. 1, 1997.

Subsec. (b) amended by Acts 2005, 79th Leg., ch. 268, Sec. 3.16, eff. Sept. 1, 2005.

Sec. 701. TIME FOR TAKING OATH AND GIVING BOND. Except as provided by Section 682A(a) of this code, the oath of a guardian may be taken and subscribed, or the bond of a guardian may be given and approved, at any time before the expiration of the 20th day after the date of the order granting letters of guardianship, or before the letters have been revoked for a failure to qualify within the time allowed. An oath may be taken before any person authorized to administer oaths under the laws of this state.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 217, Sec. 11, eff. Sept. 1, 2001.

Sec. 702. BOND REQUIRED OF GUARDIAN OF THE PERSON OR ESTATE. (a) Except as provided by Subsections (b) and (c) of this section, a guardian of the person or of the estate of a ward is required to give bond.

(b) A bond is not required to be given by a guardian that is:

(1) a corporate fiduciary, as defined by Section 601 of this code; or

(2) a guardianship program operated by a county.

(c) When a will that is made by a surviving parent and is probated in a court in this state or a written declaration that is made by a surviving parent directs that the guardian appointed in the will or declaration serve without bond, the court finding that the person is qualified shall issue letters of guardianship of the person to the person named to be appointed guardian in the will or declaration without requirement of bond. The court may not waive the requirement of a bond for the guardian of the estate of a ward, regardless of whether a surviving parent's will or declaration directs the court to waive the bond.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 642, Sec. 13, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1039, Sec. 42, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 924, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1078, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 217, Sec. 12, eff. Sept. 1, 2001.

Sec. 702A. TYPES OF BONDS ACCEPTABLE FOR GUARDIAN OF THE PERSON. (a) This section applies only to a bond required to be posted by a guardian of the person of a ward when there is no guardian of the ward's estate.

(b) To ensure the performance of the guardian's duties, the court may accept only:

(1) a corporate surety bond;

(2) a personal surety bond;

(3) a deposit of money instead of a surety bond; or

(4) a personal bond.

(c) In determining the appropriate type and amount of bond to set for the guardian, the court shall consider:

(1) the familial relationship of the guardian to the ward;

(2) the guardian's ties to the community;

(3) the guardian's financial condition;

(4) the guardian's past history of compliance with the court; and

(5) the reason the guardian may have previously been denied a corporate surety bond.

Added by Acts 1997, 75th Leg., ch. 924, Sec. 2, eff. Sept. 1, 1997.

Sec. 703. BOND OF GUARDIAN OF THE ESTATE. (a) Except when bond is not required under this chapter, before being issued letters of guardianship of estates, the recipient of letters shall give a bond that is conditioned as required by law and that is payable to the judge of the county in which the guardianship proceedings are pending or to the judge's successors in office. A bond of the guardian of the estate must have the written approval of

either of the judges in the judge's official capacity and shall be executed and approved in accordance with Subsections (b)-(q) of this section.

(b) The judge shall set the penalty of the bond in an amount that is sufficient to protect the guardianship and its creditors, as provided by this chapter.

(c) If a bond is or will be required of a guardian of an estate, the court, before setting the penalty of the bond, shall hear evidence and determine:

(1) the amount of cash on hand and where deposited, and the amount of cash estimated to be needed for administrative purposes, including the operation of a business, factory, farm, or ranch owned by the guardianship estate, and administrative expenses for one year;

(2) the revenue anticipated to be received in the succeeding 12 months from dividends, interest, rentals, or use of real or personal property belonging to the guardianship estate and the aggregate amount of any installments or periodic payments to be collected;

(3) the estimated value of certificates of stock, bonds, notes, or securities of the ward, the name of the depository in which the stocks, bonds, notes, or securities of the ward are held for safekeeping, the face value of life insurance or other policies payable to the person on whose guardianship administration is sought or to the person's estate, and other personal property that is owned by the guardianship, or by a person with a disability; and

(4) the estimated amount of debts due and owing by the ward.

(d) The judge shall set the penalty of the bond in an amount equal to the estimated value of all personal property belonging to the ward, with an additional amount to cover revenue anticipated to be derived during the succeeding 12 months from interest, dividends, collectible claims, the aggregate amount of any installments or periodic payments exclusive of income derived or to be derived from federal social security payments, and rentals for use of real and personal property, provided that the penalty of the original bond shall be reduced in proportion to the amount of cash or value of securities or other assets authorized or required to be deposited or placed in safekeeping by court order, or voluntarily made by the guardian or by the sureties on the bond of the guardian as provided in Subsections (f) and (g) of this section.

(e) If the court considers it to be in the best interests of the ward, the court may require that the guardian and the corporate or personal sureties on the bond of the guardian of the ward agree to deposit any or all cash and safekeeping of other assets of the guardianship estate in a financial institution as defined by Section 201.101, Finance Code, with its main office or a branch office in this state and qualified to act as a depository in this state under the laws of this state or of the United States, and, if the depository is otherwise proper, the court may require the deposit to be made in a manner so as to prevent the withdrawal of the money or other assets in the guardianship estate without the written consent of the surety or on court order made on the notice to the surety. An agreement made by a guardian and the sureties on the bond of the guardian under this section does not release from liability or change the liability of the principal or sureties as established by the terms of the bond.

(f) Cash, securities, or other personal assets of a ward that a ward is entitled to receive may, and if it is deemed by the court in the best interests of the ward shall, be deposited or placed in safekeeping in one or more of the depositories described in this section on the terms prescribed by the court. The court in which the guardianship proceeding is pending, on its own motion or on written application of the guardian or of any other person interested in the ward, may authorize or require additional assets of the guardianship estate then on hand or as they accrue during the pendency of the guardianship proceeding to be deposited or held in safekeeping as provided by this section. The amount of the guardian's bond shall be reduced in proportion to the cash deposited or the value of the securities or other assets placed in safekeeping. Cash that is deposited, securities or other assets held in safekeeping, or portions of the cash, securities, or other assets held in safekeeping may be withdrawn from a depository only on court order. The bond of the guardian shall be increased in proportion to the amount of cash or the value of securities or other assets that are authorized to be withdrawn.

(g) In lieu of giving a surety or sureties on a bond that is required of the guardian, or for purposes of reducing the amount of the bond, the guardian of an estate may deposit out of the guardian's own assets cash or securities that are acceptable to the court with a financial institution as defined by Section 201.101, Finance Code, with its main office or a branch office in this state. If the deposit is otherwise proper, the deposit must be equal in amount or value to the amount of the bond required or the bond shall be reduced by the value of assets that are deposited.

(h) The depository shall issue a receipt for a deposit in lieu of a surety showing the amount of cash or, if securities, the amount and description of the securities and agreeing not to disburse or deliver the cash or securities except on receipt of a certified copy of an order of the court in which the proceeding is pending. The receipt must be attached to the guardian's bond and be delivered to and filed by the county clerk after the receipt is approved by the judge.

(i) The amount of cash or securities on deposit may be increased or decreased by court order from time to time as the interests of the guardianship shall require.

(j) A cash or security deposit in lieu of a surety on the bond may be withdrawn or released only on order of a court that has jurisdiction.

(k) A creditor has the same rights against the guardian and the deposits as are provided for recovery against sureties on a bond.

(l) The court on its own motion or on written application by the guardian or any other person interested in the guardianship may require that the guardian give adequate bond in lieu of the deposit or may authorize withdrawal of the deposit and substitution of a bond with sureties on the bond. In either case, the guardian shall file a sworn statement showing the condition of the guardianship. The guardian is subject to removal as in other cases if the guardian does not file the sworn statement before the 21st day after the guardian is personally served with notice of the filing of the application or before the 21st day after the date the court enters its motion. The deposit may not be released or withdrawn until the court is satisfied as to the condition of the guardianship estate, determines the amount of bond, and receives and approves the bond.

(m) On the closing of a guardianship, a deposit or a portion of a deposit that remains on hand, whether of the assets of the guardian, the guardianship, or surety, shall be released by court order and paid to the person entitled to the assets. A writ of attachment or garnishment does not lie against the deposit except as to claims of creditors of the guardianship being administered or of persons interested in the guardianship, including distributees and wards, and only if the court has ordered distribution, and only to the extent of the ordered distribution.

(n) The surety on the bond may be an authorized corporate or personal surety.

(o) When the bond is more than \$50,000, the court may require that the bond be signed by two or more authorized corporate sureties or by one corporate surety and two or more good and sufficient personal sureties. The guardianship shall pay the cost of a bond with corporate sureties.

(p) If the sureties are natural persons, there may not be less than two sureties, each of whom shall make affidavit in the manner prescribed by this chapter. The judge must be satisfied that each surety owns property in this state, over and above that exempt by law, sufficient to qualify as a surety as required by law. Except as otherwise provided by law, only one surety is required if the surety is an authorized corporate surety. A personal surety, instead of making an affidavit or creating a lien on specific real estate when an affidavit or lien is required, may deposit the personal surety's own cash or securities in the same manner as a guardian in lieu of pledging real property as security, subject to the provisions covering the deposits when made by guardians.

(q) If the guardian is a temporary guardian, the judge shall set the amount of the bond.

(r) The provisions of this section relating to the deposit of cash and safekeeping of securities cover, as far as they may apply, the orders entered by the court when:

(1) real or personal property of a guardianship has been authorized to be sold or rented;

(2) money is borrowed from the guardianship;

(3) real property, or an interest in real property, has been authorized to be leased for mineral development or made subject to unitization;

(4) the general bond has been found insufficient; or

(5) money is borrowed or invested on behalf of a ward.

(s) In determining the amount of the bond, the court may not take into account the assets of the estate that are placed in a management trust under Subpart N, Part 4, of this code.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 6.006, eff. Sept. 1, 1999.

Sec. 704. FORM OF BOND. The following form, or the same in substance, may be used for the bonds of guardians:

"The State of Texas

"County of _____

"Know all men by these presents that we, A. B., as principal, and E. F., as sureties, are held and firmly bound to the county judge of the County of _____ and his successors in office, in the sum of \$_____; conditioned that the above bound A. B., who has been appointed by the judge of the county as guardian or temporary guardian of the person or of the estate, or both, _____, stating in each case whether or not the person is a minor or an incapacitated person other than a minor, shall well and truly perform all of the duties required of the guardian or temporary guardian of the estate by law under appointment."

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 705. BOND TO BE FILED. A bond required under this chapter shall be subscribed by the principals and sureties, and shall be filed with the clerk when approved by the court.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 706. BOND OF JOINT GUARDIANS. When two or more persons are appointed guardians and are required to give a bond by the court or under this chapter, the court may require either a separate bond from each person or one joint bond from all of the persons.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 707. BOND OF MARRIED PERSONS. When a married person is appointed guardian, the person may jointly execute, with or without, the person's spouse, the bond required by law. The bond shall bind the person's separate estate and may bind the person's spouse only if the bond is signed by the spouse.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 708. BOND OF MARRIED PERSON YOUNGER THAN 18 YEARS OF AGE. When a person who is younger than 18 years of age and is or has been married accepts and qualifies as guardian, a bond required to be executed by the person shall be as valid and binding for all purposes as if the person were of lawful age.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 708A. BOND OF GUARDIANSHIP PROGRAM. The judge may require a guardianship program that is appointed guardian under this chapter to file one bond that:

(1) meets all the conditions required under this chapter; and

(2) is in an amount that is sufficient to protect the guardianship and the creditors of the guardianship of all of the wards of the guardianship program.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 709. AFFIDAVIT OF PERSONAL SURETY; LIEN ON SPECIFIC PROPERTY WHEN REQUIRED; SUBORDINATION OF LIEN AUTHORIZED. (a) Before a judge considers a bond with a personal surety, each personal surety shall execute an affidavit stating the amount of the surety's assets, reachable by creditors, of a value over and above the surety's liabilities. The total of the surety's worth must be equal to at least double the amount of the bond. The affidavit shall be presented to the judge for the judge's consideration and, if approved, shall be attached to and form part of the bond.

(b) If the judge finds that the estimated value of personal property of the guardianship that cannot be deposited or held in safekeeping as provided by this section is such that personal sureties cannot be accepted without the creation of a specific lien on the real property of the sureties, the judge shall enter an order requiring that each surety designate real property owned by the surety in this state subject to execution. The designated property must be of a value over and above all liens and unpaid taxes, equal at least to the amount of the bond, giving an adequate legal

description of the property, all of which shall be incorporated in an affidavit by the surety, approved by the judge, and attached to and form part of the bond. If the surety does not comply with the order, the judge may require that the bond be signed by an authorized corporate surety or by an authorized corporate surety and two or more personal sureties.

(c) If a personal surety who has been required to create a lien on specific real estate desires to lease the real property for mineral development, the personal surety may file the surety's written application in the court in which the proceeding is pending to request subordination of the lien to the proposed lease. The judge of the court in which the proceeding is pending may enter an order granting the application. A certified copy of an order entered under this subsection that is filed and recorded in the deed records of the proper county is sufficient to subordinate the lien to the rights of a lessee in the proposed lease.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 710. BOND AS LIEN ON REAL PROPERTY OF SURETY. When a personal surety is required by the court to create a lien on specific real property as a condition of the personal surety's acceptance as surety on a bond, a lien on the surety's real property in this state that is described in the affidavit of the surety, and only on the property, shall arise as security for the performance of the obligation of the bond. Before letters are issued to the guardian, the clerk of the court shall mail to the office of the county clerk of each county in which any real property set forth in the surety's affidavit is located a statement signed by the clerk that gives a sufficient description of the real property, the name of the principal and sureties, the amount of the bond, the name of the guardianship, and the court in which the bond is given. The county clerk to whom such statement is sent shall record the statement in the deed records of the county. The recorded statement shall be duly indexed in such a manner that the existence and character of a lien may conveniently be determined, and the recording and indexing of the statement is constructive notice to a person of the existence of the lien on the real property located in the county, effective as of the date of the indexing.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 711. WHEN NEW BOND MAY BE REQUIRED. A guardian may be required to give a new bond when:

(1) one of the sureties on the bond dies, removes beyond the limits of the state, or becomes insolvent;

(2) in the opinion of the court, the sureties on the bond are insufficient;

(3) in the opinion of the court, the bond is defective;

(4) the amount of the bond is insufficient;

(5) one of the sureties petitions the court to be discharged from future liability on the bond; or

(6) the bond and the record of the bond has been lost or destroyed.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 712. DEMAND FOR NEW BOND BY INTERESTED PERSON. A person interested in a guardianship may allege, on application in writing that is filed with the county clerk of the county in which the guardianship proceeding is pending, that the guardian's bond is insufficient or defective or has been, with the record of the bond, lost or destroyed, and may cause the guardian to be cited to appear and show cause why the guardian should not give a new bond.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 713. JUDGE TO REQUIRE NEW BOND. When it is made known to a judge that a bond is insufficient or that the bond has, with the record of the bond, been lost or destroyed, the judge without delay shall cause the guardian to be cited to show cause why the guardian should not give a new bond.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 714. ORDER REQUIRING NEW BOND. On the return of a citation ordering a guardian to show cause why the guardian should not give a new bond, the judge on the day contained in the return of citation as the day for the hearing of the matter, shall proceed to inquire into the sufficiency of the reasons for requiring a new bond. If the judge is satisfied that a new bond should be required, the judge shall enter an order to that effect that states the amount of the new bond and the time within which the new bond shall be given, which may not be later than 20 days from the date of the order issued by the judge under this section.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 715. ORDER SUSPENDS POWERS OF GUARDIANS. When a guardian is required to give a new bond, the order requiring the bond has the effect of suspending the guardian's powers, and the guardian may not pay out any money of the guardianship or do any other official act, except to preserve the property of the guardianship, until a new bond has been given and approved.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 716. DECREASE IN AMOUNT OF BOND. A guardian required to give bond at any time may file with the clerk a written application to the court to have the bond reduced. After an application has been filed by the guardian under this section, the clerk shall issue and cause to be posted notice to all persons interested in the estate and to a surety on the bond, apprising the persons and surety of the fact and nature of the application and of the time at which the judge will hear the application. The judge may permit the filing of a new bond in a reduced amount on the submission of proof that a smaller bond than the one in effect will be adequate to meet the requirements of the law and protect the guardianship and on the approval of an accounting filed at the time of the application.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 717. DISCHARGE OF SURETIES ON EXECUTION OF NEW BOND. When a new bond has been given and approved, the judge shall enter an order discharging the sureties on the former bond from all liability for the future acts of the principal.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 718. RELEASE OF SURETIES BEFORE GUARDIANSHIP FULLY ADMINISTERED. A surety on the guardian's bond at any time may file with the clerk a petition with the court in which the proceeding is pending, praying that the guardian be required to give a new bond and that the petitioner be discharged from all liability for the future acts of the guardian. If a petition is filed, the guardian shall be cited to appear and give a new bond.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 719. RELEASE OF LIEN BEFORE GUARDIANSHIP FULLY ADMINISTERED. If a personal surety who has given a lien on specific real property as security applies to the court to have the lien released, the court shall order the release requested if the court is satisfied that the bond is sufficient without the lien on the property or if sufficient other real or personal property of the surety is substituted on the same terms and conditions required for the lien that is to be released. If the personal surety who requests the release of the lien does not offer a lien on other real or personal property and if the court is not satisfied that the bond is sufficient without the substitution of other property, the court shall order the guardian to appear and give a new bond.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 720. RELEASE OF RECORDED LIEN ON SURETY'S PROPERTY. A certified copy of the court order that describes the property, releases the lien, and is filed with the county clerk and recorded in the deed records of the county in which the property is located has the effect of cancelling the lien on the property.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 721. REVOCATION OF LETTERS FOR FAILURE TO GIVE BOND. If a guardian of a ward fails to give the bond required by the court within the time required under this chapter, another person may be appointed guardian of the ward.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 722. GUARDIAN WITHOUT BOND REQUIRED TO GIVE BOND. If a bond is not required of an individual guardian of the estate, a person who has a debt, claim, or demand against the guardianship, to the justice of which oath has been made by the person, the person's agent or attorney, or any other person interested in the guardianship, in person or as the representative of another person, may file a complaint under oath in writing in the court in which the guardian was appointed, and the court, after a complaint is filed under this section, shall cite the guardian to appear and show cause why the guardian should not be required to give bond.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 723. ORDER REQUIRING BOND. On hearing a complaint under Section 722 of this code, if it appears to the court that a guardian is wasting, mismanaging, or misapplying the guardianship estate and that a creditor may probably lose his debt, or that a person's interest in the guardianship may be diminished or lost, the court shall enter an order requiring the guardian to give a bond

not later than the 10th day after the date of the order.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 724. AMOUNT OF BOND. A bond that is required under Section 723 of this code shall be in an amount that is sufficient to protect the guardianship and its creditors. The bond shall be approved by and payable to the judge and shall be conditioned that the guardian will well and truly administer the guardianship and that the guardian will not waste, mismanage, or misapply the guardianship estate.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 725. FAILURE TO GIVE BOND. If the guardian fails to give the bond required under Section 723 of this code, and the judge does not extend the time, the judge, without citation, shall remove the guardian and appoint a competent person as guardian of the ward who:

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

(2) shall take the oath required of a guardian as the case may be before the person enters on the administration of the guardianship; and

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

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 726. BONDS NOT VOID ON FIRST RECOVERY. The bond of a guardian is not void on the first recovery, but the bond may be sued on and prosecuted from time to time until the whole amount of the bond is recovered.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

PART 4. ADMINISTRATION OF GUARDIANSHIP

SUBPART A. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

Sec. 727. APPOINTMENT OF APPRAISERS. After letters of guardianship of the estate have been granted and on its own motion or on the motion of any interested person, the court for good cause shown shall appoint at least one but not more than three disinterested persons who are citizens of the county in which letters were granted to appraise the property of the ward. If the court appoints an appraiser under this section and part of the estate is located in a county other than the county in which letters were granted, the court may appoint at least one but not more than three disinterested persons who are citizens of the county in which the part of the estate is located to appraise the property of the estate located in the county if the court considers it necessary to appoint an appraiser.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 2005, 79th Leg., ch. 701, Sec. 2, eff. Sept. 1, 2005.

Sec. 728. FAILURE OF APPRAISER TO SERVE. If an appraiser appointed under Section 727 of this code fails or refuses to act, the court shall remove the appraiser and appoint one or more appraisers.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 729. INVENTORY AND APPRAISEMENT. (a) Not later than the 30th day after the date the guardian of the estate qualifies as guardian, unless a longer time is granted by the court, the guardian of the estate shall file with the clerk of the court a verified, full, and detailed inventory, in one written instrument, of all the property of the ward that has come into the guardian's possession or knowledge. The inventory filed by the guardian under this section must include:

(1) all real property of the ward that is located in this state; and

(2) all personal property of the ward wherever located.

(b) The guardian shall set out in the inventory the guardian's appraisement of the fair market value of each item of the property on the date of the grant of letters of guardianship. If the court appoints an appraiser of the estate, the guardian shall determine the fair market value of each item of the inventory with the assistance of the appraiser and shall set out in the inventory the appraisement made by the appraiser.

(c) An inventory made under this section must specify what portion of the property is separate property and what portion is community property. If any property is owned in common with other persons, the interest owned by the ward shall be shown in the inventory, together with the names and relationship, if known, of

co-owners.

(d) The inventory, when approved by the court and duly filed with the clerk of court, is for purposes of this chapter the inventory and appraisement of the estate referred to in this chapter.

(e) The court for good cause shown may require the filing of the inventory and appraisement at a time not later than the 30th day after the date of qualification of the guardian.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Subsecs. (a), (e) amended by Acts 2003, 78th Leg., ch. 549, Sec. 13, eff. Sept. 1, 2003.

Sec. 730. LIST OF CLAIMS. The guardian shall make and attach to an inventory under Section 729 of this code a full and complete list of all claims due or owing to the ward that must state:

(1) the name of each person indebted to the ward and the address of the person if known;

(2) the nature of the debt, whether it is a note, bill, bond, or other written obligation or whether it is an account or verbal contract;

(3) the date of the indebtedness and the date when the debt is or was due;

(4) the amount of each claim, the rate of interest on each claim, and time for which the claim bears interest; and

(5) what portion of the claim is held in common with others, including the names and the relationships of other part owners and the interest of the estate in the claim.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 731. AFFIDAVIT ATTACHED. The guardian of the estate shall attach to the inventory and list of claims the guardian's affidavit subscribed and sworn to before an officer in the county authorized by law to administer oaths that the inventory and list of claims are a true and complete statement of the property and claims of the estate that have come to the guardian's knowledge.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 732. APPRAISER FEES. An appraiser appointed by the court is entitled to receive a reasonable fee for the performance of the appraiser's duties as an appraiser that are to be paid out of the estate.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 733. COURT ACTION. (a) On return of the inventory, appraisement, and list of claims, the judge shall examine and approve or disapprove the inventory, appraisement, or list of claims as follows:

(1) if the judge approves the inventory, appraisement, and list of claims, the judge shall issue an order to that effect; and

(2) if the judge does not approve the inventory, appraisement, or list of claims, the judge shall enter an order to that effect.

(b) The court order shall require the return of another inventory, appraisement, and list of claims, or whichever of them is disapproved, within a time specified in the order but not later than 20 days after the date of the order. The judge may appoint new appraisers if the judge deems it necessary.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 734. DISCOVERY OF ADDITIONAL PROPERTY. The guardian of the estate shall promptly file with the clerk of court a verified, full, and detailed supplemental inventory and appraisement if property or claims that are not included in the inventory come to the guardian's possession or knowledge after the guardian files the inventory and appraisement required under Section 729 of this code.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 735. ADDITIONAL INVENTORY OR LIST OF CLAIMS. (a) On the written complaint of an interested person that property or claims of the estate have not been included in the inventory and list of claims filed by the guardian, the guardian of an estate shall be cited to appear before the court in which the cause is pending and show cause why the guardian should not be required to make and return an additional inventory or list of claims, or both.

(b) After hearing a complaint filed under this section and being satisfied of the truth of the complaint, the court shall enter an order requiring the additional inventory or list of claims, or both, to be made and returned in like manner as the original inventory, not later than 20 days after the date of the order, as may be set by the court. The additional inventory or list of claims must include only property or claims that were not inventoried or

listed by the guardian.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 736. CORRECTION WHEN INVENTORY, APPRAISEMENT, OR LIST OF CLAIMS ERRONEOUS OR UNJUST. A person interested in an estate who deems an inventory, appraisal, or list of claims returned by the guardian erroneous or unjust in any particular form may file a written complaint that sets forth and points out the alleged erroneous or unjust items and cause the guardian to be cited to appear before the court and show cause why the errors should not be corrected. On the hearing of a complaint filed under this section, if the court is satisfied from the evidence that the inventory, appraisal, or list of claims is erroneous or unjust in any particular form as alleged in the complaint, the court shall enter an order that specifies the erroneous or unjust items and the corrections to be made and that appoints an appraiser to make a new appraisal correcting the erroneous or unjust items and requires the return of the new appraisal not later than the 20th day after the date of the order. The court may also, on its own motion or on motion of the guardian of the estate, have a new appraisal made for the purposes described by this section.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 737. EFFECT OF REAPPRAISEMENT. When a reappraisal is made, returned, and approved by the court, the reappraisal stands in place of the original appraisal. Not more than one reappraisal shall be made, but any person interested in the estate may object to the reappraisal before or after the reappraisal is approved. If the court finds that the reappraisal is erroneous or unjust, the court shall appraise the property on the basis of the evidence before the court.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 738. FAILURE OF JOINT GUARDIANS TO RETURN AN INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. If there is more than one qualified guardian of the estate, one or more of the guardians, on the neglect of the other guardians, may make and return an inventory and appraisal and list of claims. The guardian so neglecting may not thereafter interfere with the estate or have any power over the estate. The guardian that returns an inventory, appraisal, and list of claims has the whole administration, unless, not later than the 60th day after the date of return, each of the delinquent guardians assigns to the court in writing and under oath a reasonable excuse that the court may deem satisfactory. If no excuse is filed or if the excuse filed by a delinquent guardian is insufficient, the court shall enter an order removing the delinquent guardian and revoking the guardian's letters.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 739. USE OF INVENTORIES, APPRAISEMENTS, AND LISTS OF CLAIMS AS EVIDENCE. All inventories, appraisals, and lists of claims that have been taken, returned, and approved in accordance with the law, or the record of an inventory, appraisal, or list of claims, or copies of either the originals or the record, duly certified under the seal of the county court affixed by the clerk, may be given in evidence in any of the courts of this state in any suit by or against the guardian of the estate, but may not be conclusive for or against the guardian of the estate if it is shown that any property or claims of the estate are not shown in the inventory, appraisal, or list of claims or that the value of the property or claims of the estate actually was in excess of the value shown in the appraisal and list of claims.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

SUBPART B. ANNUAL ACCOUNTS, REPORTS, AND OTHER EXHIBITS

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

(1) all property that has come to the guardian's knowledge or into the guardian's possession that has not been previously listed or inventoried as property of the ward;

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

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

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

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

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

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

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

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

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

(3) proof of the existence and possession of securities owned by the estate, or shown by the accounting, and other assets held by a depository subject to court order, the proof by one of the following means:

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

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

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

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

(d) A certificate or affidavit under this section shall be to the effect that the affiant has examined the assets exhibited to the affiant by the guardian as assets of the estate in which the accounting is made, shall describe the assets by reference to the account or otherwise sufficiently to identify those assets exhibited, and shall state the time when and the place where the assets were exhibited. Instead of using a certificate or an affidavit, the representative may exhibit the securities to the judge of the court who shall endorse on the account, or include in the judge's order with respect to the account, a statement that the securities shown to the judge as on hand were in fact exhibited to the judge and that those securities exhibited to the judge were the same as those shown in the account, or note any variance. If the securities are exhibited at any place other than where deposited for safekeeping, it shall be at the expense and risk of the representative. The judge may require additional evidence as to the existence and custody of the securities and other personal property as in the judge's discretion the judge considers proper, and the judge may require the representative to exhibit the securities to the judge, or any person designated by the judge, at any time at the place where the securities are held for safekeeping.

(e) The guardian of the estate filing the account shall attach to the account the guardian's affidavit that:

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

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

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

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

(A) the amount of the taxes;

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

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

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

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

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 742. ACTION ON ANNUAL ACCOUNTS. (a) The rules in this section govern the handling of annual accounts.

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

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

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

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

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

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

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

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 43, eff. Sept. 1, 1995.

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

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

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

(2) the ward's current:

(A) name, address, and phone number; and

(B) age and date of birth;

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

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

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

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

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

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

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

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

(A) a physician;

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

(C) a dentist;

(D) a social or other caseworker; or

(E) another individual who provided treatment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 44, 45, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1403, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 905, Sec. 5, eff. Sept. 1, 1999. Subsec. (b) amended by Acts 2003, 78th Leg., ch. 692, Sec. 1, eff. Sept. 1, 2003.

Sec. 744. PENALTY FOR FAILURE TO FILE ACCOUNTINGS, EXHIBITS, OR REPORTS. If a guardian fails to file any accounting, exhibit, report of the guardian of the person, or other report required by this chapter, any person interested in the estate may, on written complaint filed with the clerk of the court, or the court on its own motion, may cause the guardian to be cited to appear and show cause why the guardian should not file the account, exhibit, or report; and, on hearing, the court may order the guardian to file the account, exhibit, or report, and, unless good cause is shown for the failure to file the account, exhibit, or report, the court may fine the guardian an amount not to exceed \$1,000, revoke the letters of the guardian, or fine the guardian an amount not to exceed \$1,000 and revoke the letters of the guardian.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 46, eff. Sept. 1, 1995.

SUBPART C. FINAL SETTLEMENT, ACCOUNTING, AND DISCHARGE

Sec. 745. SETTLING GUARDIANSHIPS OF THE ESTATE. (a) A guardianship of the estate of a ward shall be settled when:

(1) a minor ward dies or becomes an adult by becoming 18 years of age, or by removal of disabilities of minority according to the law of this state, or by marriage;

(2) an incapacitated ward dies, or is decreed as provided by law to have been restored to full legal capacity;

(3) the spouse of a married ward has qualified as survivor in community and the ward owns no separate property;

(4) the estate of a ward becomes exhausted;

(5) the foreseeable income accruing to a ward or to his estate is so negligible that maintaining the guardianship in force would be burdensome;

(6) all of the assets of the estate have been placed in a management trust under Subpart N, Part 4, of this code and the court determines that a guardianship for the ward is no longer necessary; or

(7) the court determines for any other reason that a guardianship for the ward is no longer necessary.

(b) In a case arising under Subsection (a)(5) of this section, the court may authorize the income to be paid to a parent, or other person who has acted as guardian of the ward, to assist in the maintenance of the ward and without liability to account to the court for the income.

(c) When the estate of a minor ward consists only of cash or cash equivalents in an amount of \$100,000 or less, the guardianship of the estate may be terminated and the assets paid to the county clerk of the county in which the guardianship proceeding is pending, and the clerk shall manage the funds as provided by Section 887 of this code.

(d) In the settlement of a guardianship, the court may appoint an attorney ad litem to represent the interests of the ward, and may allow the attorney reasonable compensation for services provided by the attorney out of the ward's estate.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 47, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 127, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 217, Sec. 13, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 484, Sec. 3, 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1174, Sec. 5, eff. Sept. 1, 2001.

Subsec. (c) amended by Acts 2003, 78th Leg., ch. 549, Sec. 14, eff. Sept. 1, 2003.

Sec. 746. PAYMENT OF FUNERAL EXPENSES AND OTHER DEBTS ON DEATH OF WARD. Before the guardianship of a person or estate of a ward is closed on the death of a ward, the guardian, subject to the approval of the court, may make all funeral arrangements, pay for the funeral expenses out of the estate of the deceased ward, and pay all other debts out of the estate. If a personal representative of the estate of a deceased ward is appointed, the court shall on the

written complaint of the personal representative cause the guardian to be cited to appear and present a final account as provided in Section 749 of this code.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 484, Sec. 5, eff. Sept. 1, 2001.

Sec. 747. TERMINATION OF GUARDIANSHIP OF THE PERSON. (a) When the guardianship of an incapacitated person is required to be settled as provided by Section 745 of this code, the guardian of the person shall deliver all property of the ward in the possession or control of the guardian to the emancipated ward or other person entitled to the property. If the ward is deceased, the guardian shall deliver the property to the personal representative of the deceased ward's estate or other person entitled to the property.

(b) If there is no property of the ward in the possession or control of the guardian of the person, the guardian shall, not later than the 60th day after the date on which the guardianship is required to be settled, file with the court a sworn affidavit that states the reason the guardianship was terminated and to whom the property of the ward in the guardian's possession was delivered. The judge may issue orders as necessary for the best interests of the ward or of the estate of a deceased ward. This section does not discharge a guardian of the person from liability for breach of the guardian's fiduciary duties.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 484, Sec. 6, eff. Sept. 1, 2001.

Subsec. (b) amended by Acts 2003, 78th Leg., ch. 586, Sec. 1, eff. Sept. 1, 2003.

Sec. 748. PAYMENT BY GUARDIAN OF TAXES OR EXPENSES. Notwithstanding any other provision of this chapter, a probate court in which proceedings to declare heirship are maintained may order the payment by the guardian of any and all taxes or expenses of administering the estate and may order the sale of properties in the ward's estate, when necessary, for the purpose of paying the taxes or expenses of administering the estate or for the purpose of distributing the estate among the heirs.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 749. ACCOUNT FOR FINAL SETTLEMENT OF ESTATES OF WARDS. When a guardianship of the estate is required to be settled, the guardian shall present to the court the guardian's verified account for final settlement. In the account it shall be sufficient to refer to the inventory without describing each item of property in detail and to refer to and adopt any and all guardianship proceedings that concern sales, renting or hiring, leasing for mineral development, or any other transaction on behalf of the guardianship estate, including an exhibit, account, or voucher previously filed and approved, without restating the particular items. Each final account shall be accompanied by proper vouchers in support of each item not already accounted for and shall show, either by reference to any proceedings authorized above or by statement of the facts:

(1) the property, rents, revenues, and profits received by the guardian, and belonging to the ward, during the term of the guardianship;

(2) the disposition made of the property, rents, revenues, and profits;

(3) the expenses and debts against the estate that remain unpaid, if any;

(4) the property of the estate that remains in the hands of the guardian, if any;

(5) that the guardian has paid all required bond premiums;

(6) the tax returns the guardian has filed during the guardianship;

(7) the amount of taxes the ward owed during the guardianship that the guardian has paid;

(8) a complete account of the taxes the guardian has paid during the guardianship, including the amount of the taxes, the date the guardian paid the taxes, and the name of the governmental entity to which the guardian paid the taxes;

(9) a description of all current delinquencies in the filing of tax returns and the payment of taxes and a reason for each delinquency; and

(10) other facts as appear necessary to a full and definite understanding of the exact condition of the guardianship.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1403, Sec. 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 484, Sec. 7, eff. Sept. 1, 2001.

Sec. 750. PROCEDURE IN CASE OF NEGLECT OR FAILURE TO FILE FINAL ACCOUNT OR REPORT. (a) If a guardian charged with the duty of filing a final account or report fails or neglects so to do at the proper time, the court may, on the court's own motion, or on the written complaint of the emancipated ward or anyone interested in the ward or the ward's estate, shall cause the guardian to be cited to appear and present the account or report within the time specified in the citation.

(b) If a written complaint has not been filed by anyone interested in the guardianship of a person or estate of a minor or deceased ward, the court may, on or after the third anniversary after the date of the death of the ward or after the date the minor reaches the age of majority, remove the estate from the court's active docket without a final accounting and without appointing a successor personal representative.

(c) If a complaint has not been filed by anyone interested in the estate of a ward whose whereabouts are unknown to the court, the court may, on or after the fourth anniversary after the ward's whereabouts became unknown to the court, remove the estate from the court's active docket without a final accounting and without appointing a successor personal representative.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 751. CITATION ON PRESENTATION OF ACCOUNT FOR FINAL SETTLEMENT. (a) On the filing of an account for final settlement by a guardian of the estate of a ward, citation must contain a statement that the final account has been filed, the time and place when it will be considered by the court, and a statement requiring the person cited to appear and contest the final account if the person determines it is proper. The county clerk shall issue the citation to the following persons and in the manner provided by this section.

(b) If a ward is a living resident of this state who is 14 years of age or older, and the ward's residence is known, the ward shall be cited by personal service, unless the ward, in person or by attorney, by writing filed with the clerk, waives the issuance and personal service of citation.

(c) If one who has been a ward is deceased, the ward's executor or administrator, if one has been appointed, shall be personally served, but no service is required if the executor or administrator is the same person as the guardian.

(d) If a ward's residence is unknown, or if the ward is a nonresident of this state, or if the ward is deceased and no representative of the ward's estate has been appointed and qualified in this state, the citation to the ward or to the ward's estate shall be by publication, unless the court by written order directs citation by posting.

(e) If the court deems further additional notice necessary, it shall require the additional notice by written order. In its discretion, the court may allow the waiver of notice of an account for final settlement in a guardianship proceeding.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 752. COURT ACTION; CLOSING OF GUARDIANSHIP OF WARD'S ESTATE. (a) On being satisfied that citation has been duly served on all persons interested in the estate, the court shall examine the account for final settlement and the vouchers accompanying the account. After hearing all exceptions or objections to the account and evidence in support of or against the account, the court shall audit and settle the same, and restate it if that is necessary.

(b) On final settlement of an estate, if there is any part of the estate remaining in the hands of the guardian, the court shall order that it be delivered, in case of a ward, to the ward, or in the case of a deceased ward, to the personal representative of the deceased ward's estate if one has been appointed, or to any other person legally entitled to the estate.

(c) If on final settlement of an estate there is no part of the estate remaining in the hands of the guardian, the court shall discharge the guardian from the guardian's trust and order the estate closed.

(d) When the guardian of an estate has fully administered the estate in accordance with this chapter and the orders of the court and the guardian's final account has been approved, and the guardian has delivered all of the estate remaining in the

guardian's hands to any person entitled to receive the estate, the court shall enter an order discharging the guardian from the guardian's trust, and declaring the estate closed.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2001, 77th Leg., ch. 484, Sec. 8, eff. Sept. 1, 2001.

Sec. 753. MONEY BECOMING DUE PENDING FINAL DISCHARGE. Money or any other thing of value falling due to the estate or ward while the account for final settlement is pending, other than money or any other thing of value held under Section 703(c) of this code, until the order of final discharge of the guardian is entered in the minutes of the court, may be paid, delivered, or tendered to the emancipated ward, the guardian, or the personal representative of the deceased ward's estate, who shall issue a receipt for the money or other thing of value, and the obligor or payor shall be discharged of the obligation for all purposes.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 754. INHERITANCE TAXES MUST BE PAID. If the guardian has been ordered to make payment of inheritance taxes under this code, an estate of a deceased ward may not be closed unless the final account shows and the court finds that all inheritance taxes due and owing to this state with respect to all interests and properties passing through the hands of the guardian have been paid.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 755. APPOINTMENT OF ATTORNEY TO REPRESENT WARD. When the ward is dead and there is no executor or administrator of the ward's estate, or when the ward is a nonresident, or the ward's residence is unknown, the court may appoint an attorney ad litem to represent the interest of the ward in the final settlement with the guardian, and shall allow the attorney reasonable compensation out of the ward's estate for any services provided by the attorney.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 756. OFFSETS, CREDITS, AND BAD DEBTS. In the settlement of any of the accounts of the guardian of an estate, all debts due the estate that the court is satisfied could not have been collected by due diligence, and that have not been collected, shall be excluded from the computation.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 757. ACCOUNTING FOR LABOR OR SERVICES OF A WARD. The guardian of a ward shall account for the reasonable value of the labor or services of the ward of the guardian, or the proceeds of the labor or services, if the labor or services have been rendered by the ward, but the guardian is entitled to reasonable credits for the board, clothing, and maintenance of the ward.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 758. PROCEDURE IF REPRESENTATIVE FAILS TO DELIVER ESTATE. If a guardian, on final settlement or termination of the guardianship of the estate, neglects to deliver to the person entitled when legally demanded any portion of the estate or any funds or money in the hands of the guardian ordered to be delivered, a person entitled to the estate, funds, or money may file with the clerk of the court a written complaint alleging the fact of the guardian's neglect, the date of the person's demand, and other relevant facts. After the person files a complaint under this section, the clerk shall issue a citation to be served personally on the guardian, appraising the guardian of the complaint and citing the guardian to appear before the court and answer, if the guardian desires, at the time designated in the citation. If at the hearing the court finds that the citation was duly served and returned and that the guardian is guilty of the neglect charged, the court shall enter an order to that effect, and the guardian shall be liable to the person who filed the complaint in damages at the rate of 10 percent of the amount or appraised value of the money or estate withheld, per month, for each month or fraction of a month that the estate or money of a guardianship of the estate, or on termination of guardianship of the person, or funds is or has been withheld by the guardian after the date of demand, which damages may be recovered in any court of competent jurisdiction.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

SUBPART D. REVOCATION OF LETTERS, DEATH, RESIGNATION, AND REMOVAL

Sec. 759. APPOINTMENT OF SUCCESSOR GUARDIAN. (a) In case of the death of the guardian of the person or of the estate of a ward, a personal representative of the deceased guardian shall account for, pay, and deliver to a person legally entitled to receive the

property, all the property belonging to the guardianship that is entrusted to the care of the representative, at the time and in the manner as the court orders. On a finding that a necessity for the immediate appointment of a successor guardian exists, the court may appoint a successor guardian without citation or notice.

(b) If letters have been granted to a person, and another person whose right to be appointed successor guardian is prior and who has not waived the right and is qualified, applies for letters, the letters previously granted shall be revoked and other letters shall be granted to the applicant.

(c) If a person named in a will as guardian is not an adult when the will is probated and letters in any capacity have been granted to another person, the nominated guardian, on proof that the nominated guardian has become an adult and is not otherwise disqualified from serving as a guardian, is entitled to have the former letters revoked and appropriate letters granted to the nominated guardian. If the will names two or more persons as guardian, any one or more of whom are minors when the will is probated and letters have been issued to the persons who are adults, a minor, on becoming an adult, if not otherwise disqualified, is permitted to qualify and receive letters.

(d) If a person named in a will as guardian was ill or absent from the state when the testator died, or when the will was proved, and for that reason could not present the will for probate not later than the 30th day after the testator's death, or accept and qualify as guardian not later than the 20th day after the date the will was probated, the person may accept and qualify as guardian not later than the 60th day after the person's return or recovery from illness, on proof to the court that the person was absent or ill. If the letters have been issued to another person, the letters shall be revoked.

(e) If it is discovered after letters of guardianship have been issued that the deceased person left a lawful will, the letters shall be revoked and proper letters of guardianship issued to a person entitled to receive the letters.

(f) Except when otherwise expressly provided in this chapter, letters may not be revoked and other letters granted except on application, and after personal service of citation on the person, if living, whose letters are sought to be revoked, that the person appear and show cause why the application should not be granted.

(g) Money or any other thing of value falling due to a ward while the office of the guardian is vacant may be paid, delivered, or tendered to the clerk of the court for credit of the ward, and the debtor, obligor, or payor shall be discharged of the obligation for all purposes to the extent and purpose of the payment or tender. If the clerk accepts the payment or tender, the clerk shall issue a proper receipt for the payment or tender.

(h) The court may appoint as successor guardian a spouse, parent, or child of a proposed ward who has been disqualified from serving as guardian because of a litigation conflict under Section 681(4) of this code on removal of the conflict that caused the initial disqualification if the spouse, parent, or child is otherwise qualified to serve as a guardian.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 48, eff. Sept. 1, 1995.

Sec. 760. RESIGNATION. (a) A guardian of the estate who wishes to resign the guardian's trust shall file with the clerk a written application to the court to that effect, accompanied by a full and complete exhibit and final account, duly verified, showing the true condition of the guardianship estate entrusted to the guardian's care. A guardian of the person who wishes to resign the guardian's trust shall file with the clerk a written application to the court to that effect, accompanied by a report setting forth the information required in the annual report required under this chapter, duly verified, showing the condition of the ward entrusted to the guardian's care.

(b) If the necessity exists, the court may immediately accept a resignation and appoint a successor but may not discharge the person resigning as guardian of the estate or release the person or the sureties on the person's bond until final order or judgment is rendered on the final account of the guardian.

(c) On the filing of an application to resign, supported by an exhibit and final account, the clerk shall call the application

to the attention of the judge, who shall set a date for a hearing on the matter. The clerk shall then issue a citation to all interested persons, showing that proper application has been filed and the time and place set for hearing, at which time the interested persons may appear and contest the exhibit and account or report. The citation shall be posted, unless the court directs that it be published.

(d) At the time set for hearing, unless it has been continued by the court, if the court finds that citation has been duly issued and served, the court shall proceed to examine the exhibit and account or report and hear all evidence for and against the exhibit, account, or report and shall, if necessary, restate, and audit and settle the exhibit, account, or report. If the court is satisfied that the matters entrusted to the applicant have been handled and accounted for in accordance with the law, the court shall enter an order of approval and require that the estate remaining in the possession of the applicant, if any, be delivered to the person entitled by law to receive it. A guardian of the person is required to comply with all orders of the court concerning the ward of the guardian.

(e) A resigning guardian may not be discharged until the application has been heard, the exhibit and account or report examined, settled, and approved, and the guardian has satisfied the court that the guardian has delivered the estate, if there is any part of the estate remaining in the possession of the guardian, or has complied with all orders of the court with relation to the guardian's trust.

(f) When the resigning guardian has complied in all respects with the orders of the court, an order shall be made accepting the resignation, discharging the applicant, and, if the applicant is under bond, the sureties of the guardian.

(g) The court at any time may order a resigning guardian who has all or part of the estate of a ward to deliver all or part of the ward's estate to a person who has been appointed and has qualified as successor guardian.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 49, eff. Sept. 1, 1995.

Sec. 760A. CHANGE OF RESIDENT AGENT. (a) A guardian may change its resident agent to accept service of process in a guardianship proceeding or other matter relating to the guardianship by filing a statement of the change entitled "Designation of Successor Resident Agent" with the court in which the guardianship proceeding is pending. The statement must contain the names and addresses of the:

- (1) guardian;
- (2) resident agent; and
- (3) successor resident agent.

(b) The designation of a successor resident agent made in a statement filed under this section takes effect on the date on which the statement is filed with the court.

Added by Acts 2001, 77th Leg., ch. 217, Sec. 14, eff. Sept. 1, 2001.

Sec. 760B. RESIGNATION OF RESIDENT AGENT. (a) A resident agent of a guardian may resign as the resident agent by giving notice to the guardian and filing with the court in which the guardianship proceeding is pending a statement entitled "Resignation of Resident Agent" that:

- (1) contains the name of the guardian;
- (2) contains the address of the guardian most recently known by the resident agent;

(3) states that notice of the resignation has been given to the guardian and that the guardian does not have a resident agent; and

(4) contains the date on which the notice of the resignation was given to the guardian.

(b) The resident agent shall send, by certified mail, return receipt requested, a copy of a resignation statement filed under Subsection (a) of this section to:

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

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

(c) The resignation of a resident agent takes effect on the date on which the court enters an order accepting the agent's resignation. A court may not enter an order accepting the agent's

resignation unless the agent complies with the requirements of this section.

Added by Acts 2001, 77th Leg., ch. 217, Sec. 14, eff. Sept. 1, 2001.

Sec. 761. REMOVAL. (a) The court, on its own motion or on motion of any interested person, including the ward, and without notice, may remove any guardian, appointed under this chapter, who:

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

(2) fails to return within 30 days after qualification, unless the time is extended by order of the court, an inventory of the property of the guardianship estate and list of claims that have come to the guardian's knowledge;

(3) having been required to give a new bond, fails to do so within the time prescribed;

(4) absents himself from the state for a period of three months at one time without permission of the court, or removes from the state;

(5) cannot be served with notices or other processes because of the fact that:

(A) the guardian's whereabouts are unknown;

(B) the guardian is eluding service; or

(C) the guardian is a nonresident of this state who does not have a resident agent to accept service of process in any guardianship proceeding or other matter relating to the guardianship;

(6) has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the guardian's care;

(7) has neglected or cruelly treated a ward; or

(8) has neglected to educate or maintain the ward as liberally as the means of the ward and the condition of the ward's estate permit.

(b) The court may remove a personal representative under Subsection (a)(6) or (7) of this section only on the presentation of clear and convincing evidence given under oath.

(c) The court may remove a guardian on its own motion, or on the 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, when:

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

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

(3) the guardian fails to obey any proper order of the court having jurisdiction with respect to the performance of the guardian's duties;

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

(5) the guardian becomes incapacitated, or is sentenced to the penitentiary, or from any other cause becomes incapable of properly performing the duties of the guardian's trust;

(6) the guardian neglects or cruelly treats the ward;

(6-a) the guardian neglects to educate or maintain the ward as liberally as the means of the ward's estate and the ward's ability or condition permit;

(7) the guardian interferes with the ward's progress or participation in programs in the community;

(8) the guardian fails to comply with the requirements of Section 697 of this code; or

(9) the court determines that, because of the dissolution of the joint guardians' marriage, the termination of the guardians' joint appointment and the continuation of only one of the joint guardians as the sole guardian is in the best interest of the ward.

(d) The order of removal shall state the cause of the removal. It must require that any letters issued to the person who is removed shall, if the removed person has been personally served with citation, be surrendered and that all those letters be cancelled of record, whether or not delivered. It must further require, as to all the estate remaining in the hands of a removed person, delivery of the estate to the person or persons entitled to the estate, or to one who has been appointed and has qualified as

successor guardian, and as to the person of a ward, that control be relinquished as required in the order.

(e) If a joint guardian is removed under Subsection (c)(9) of this section, the other joint guardian is entitled to continue to serve as the sole guardian unless removed for a reason other than the dissolution of the joint guardians' marriage.

(f) If the necessity exists, the court may immediately appoint a successor but may not discharge the person removed as guardian of the estate or release the person or the sureties on the person's bond until final order or judgment is rendered on the final account of the guardian.

(g) The court at any time may order a person removed as guardian under this section who has all or part of the estate of a ward to deliver all or part of the ward's estate to a person who has been appointed and has qualified as successor guardian.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 50, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 217, Sec. 15, eff. Sept. 1, 2001.

Subsec. (a) amended by Acts 2005, 79th Leg., ch. 5, Sec. 1, eff. April 27, 2005; Subsecs. (a) and (c) amended by Acts 2005, 79th Leg., ch. 127, Sec. 1, eff. Sept. 1, 2005; Subsec. (a) amended by Acts 2005, 79th Leg., ch. 200, Sec. 5, eff. Sept. 1, 2005.

Sec. 762. REINSTATEMENT AFTER REMOVAL. (a) Not later than the 10th day after the date the court signs the order of removal, a personal representative who is removed under Subsection (a)(6) or (7), Section 761, of this code may file an application with the court for a hearing to determine whether the personal representative should be reinstated.

(b) On the filing of an application for a hearing under this section, the court clerk shall issue a notice stating that the application for reinstatement was filed, the name of the ward, and the name of the applicant. The clerk shall issue the notice to the applicant, the ward, a person interested in the welfare of the ward or the ward's estate, and, if applicable, a person who has control of the care and custody of the ward. The notice must cite all persons interested in the estate or welfare of the ward to appear at the time and place stated in the notice if they wish to contest the application.

(c) If, at the conclusion of a hearing under this section, the court is satisfied by a preponderance of the evidence that the applicant did not engage in the conduct that directly led to the applicant's removal, the court shall set aside an order appointing a successor representative, if any, and shall enter an order reinstating the applicant as personal representative of the ward or estate.

(d) If the court sets aside the appointment of a successor representative under this section, the court may require the successor representative to prepare and file, under oath, an accounting of the estate and to detail the disposition the successor has made of the property of the estate.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Subsec. (b) amended by Acts 2003, 78th Leg., ch. 549, Sec. 15, eff. Sept. 1, 2003.

Sec. 763. ADDITIONAL POWERS OF SUCCESSOR GUARDIAN. In addition, a successor guardian may make himself, and may be made, a party to a suit prosecuted by or against the predecessor of the successor guardian. The successor guardian may settle with the predecessor and receive and receipt for all the portion of the estate as remains in the hands of the successor guardian. The successor guardian may bring suit on the bond or bonds of the predecessor in the guardian's own name and capacity for all the estate that came into the hands of the predecessor and has not been accounted for by the predecessor.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 764. SUBSEQUENT GUARDIANS SUCCEED TO PRIOR RIGHTS AND DUTIES. Whenever a guardian shall accept and qualify after letters of guardianship are granted on the estate, the guardian shall, in like manner, succeed to the previous guardian, and the guardian shall administer the estate in like manner as if the administration by the guardian were a continuation of the former one.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 765. SUCCESSORS' RETURN OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. A successor guardian who has qualified to succeed a prior guardian shall make and return to the court an inventory, appraisal, and list of claims of the estate, not later than the

30th day after the date the successor guardian qualifies as guardian, in the same manner as is required of an original appointee. The successor guardian shall in like manner as is required of an original appointee return additional inventories, appraisements, and lists of claims. In all orders appointing a successor guardian, the court shall appoint an appraiser as in original appointments on the application of any person interested in the estate.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 549, Sec. 16, eff. Sept. 1, 2003.

SUBPART E. GENERAL DUTIES AND POWERS OF GUARDIANS

Sec. 767. POWERS AND DUTIES OF GUARDIANS OF THE PERSON. (a) The guardian of the person is entitled to take charge of the person of the ward, and the duties of the guardian correspond with the rights of the guardian. A guardian of the person has:

(1) the right to have physical possession of the ward and to establish the ward's legal domicile;

(2) the duty to provide care, supervision, and protection for the ward;

(3) the duty to provide the ward with clothing, food, medical care, and shelter;

(4) the power to consent to medical, psychiatric, and surgical treatment other than the in-patient psychiatric commitment of the ward; and

(5) on application to and order of the court, the power to establish a trust in accordance with 42 U.S.C. Section 1396p(d)(4)(B), as amended, and direct that the income of the ward as defined by that section be paid directly to the trust, solely for the purpose of the ward's eligibility for medical assistance under Chapter 32, Human Resources Code.

(b) Notwithstanding Subsection (a)(4) of this section, a guardian of the person of a ward has the power to transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993;
Amended by Acts 2003, 78th Leg., ch. 549, Sec. 17, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 692, Sec. 2, eff. Sept. 1, 2003; Subsec. (a) amended by Acts 2005, 79th Leg., ch. 268, Sec. 3.17, eff. Sept. 1, 2005.

Sec. 768. GENERAL POWERS AND DUTIES OF GUARDIAN OF THE ESTATE. The guardian of the estate of a ward is entitled to the possession and management of all property belonging to the ward, to collect all debts, rentals, or claims that are due to the ward, to enforce all obligations in favor of the ward, and to bring and defend suits by or against the ward; but, in the management of the estate, the guardian is governed by the provisions of this chapter. It is the duty of the guardian of the estate to take care of and manage the estate as a prudent person would manage the person's own property, except as otherwise provided by this chapter. The guardian of the estate shall account for all rents, profits, and revenues that the estate would have produced by such prudent management.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 549, Sec. 18, eff. Sept. 1, 2003.

Sec. 769. SUMMARY OF POWERS OF GUARDIAN OF PERSON AND ESTATE. The guardian of both the person of and estate of a ward has all the rights and powers and shall perform all the duties of the guardian of the person and of the guardian of the estate.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 770. CARE OF WARD; COMMITMENT. (a) The guardian of an adult may expend funds of the guardianship as provided by court order to care for and maintain the incapacitated person. The guardian may apply for residential care and services provided by a public or private facility on behalf of an incapacitated person who has decision-making ability if the person agrees to be placed in the facility. The guardian shall report the condition of the person to the court at regular intervals at least annually, unless the court orders more frequent reports. If the person is receiving residential care in a public or private residential care facility, the guardian shall include in any report to the court a statement as to the necessity for continued care in the facility.

(b) Except as provided by Subsection (c) or (d) of this

section, a guardian may not voluntarily admit an incapacitated person to a public or private in-patient psychiatric facility or to a residential facility operated by the Texas Department of Mental Health and Mental Retardation for care and treatment. If care and treatment in a psychiatric or a residential facility are necessary, the person or the person's guardian may:

(1) apply for services under Section 593.027 or 593.028, Health and Safety Code;

(2) apply to a court to commit the person under Subtitle D, Title 7, Health and Safety Code (Persons with Mental Retardation Act), Subtitle C, Title 7, Health and Safety Code (Texas Mental Health Code), or Chapter 462, Health and Safety Code; or

(3) transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code.

(c) A guardian of a person younger than 16 years of age may voluntarily admit an incapacitated person to a public or private inpatient psychiatric facility for care and treatment.

(d) A guardian of a person may voluntarily admit an incapacitated person to a residential care facility for emergency care or respite care under Section 593.027 or 593.028, Health and Safety Code.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Subsec. (b) amended by Acts 2003, 78th Leg., ch. 692, Sec. 3, eff. Sept. 1, 2003.

Sec. 770A. ADMINISTRATION OF MEDICATION. (a) In this section, "psychoactive medication" has the meaning assigned by Section 574.101, Health and Safety Code.

(b) If a person under a protective custody order as provided by Subchapter B, Chapter 574, Health and Safety Code, is a ward who is not a minor, the guardian of the person of the ward may consent to the administration of psychoactive medication as prescribed by the ward's treating physician regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

Added by Acts 2003, 78th Leg., ch. 692, Sec. 4, eff. Sept. 1, 2003.

SUBPART F. SPECIFIC DUTIES AND POWERS OF GUARDIANS

Sec. 771. GUARDIAN OF ESTATE: POSSESSION OF PERSONAL PROPERTY AND RECORDS. The guardian of an estate, immediately after receiving letters of guardianship, shall collect and take into possession the personal property, record books, title papers, and other business papers of the ward and shall deliver the personal property, books, or papers, of the ward to a person who is legally entitled to that property when the guardianship has been closed or a successor guardian has received letters.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 772. COLLECTION OF CLAIMS AND RECOVERY OF PROPERTY. Every guardian of an estate shall use ordinary diligence to collect all claims and debts due the ward and to recover possession of all property of the ward to which the ward has claim or title, if there is a reasonable prospect of collecting the claims or of recovering the property. If the guardian wilfully neglects to use ordinary diligence, the guardian and the sureties on the guardian's bond shall be liable, at the suit of any person interested in the estate, for the use of the estate, for the amount of the claims or for the value of the property that has been lost due to the guardian's neglect.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 51, eff. Sept. 1, 1995.

Sec. 773. SUIT BY GUARDIAN OF ESTATE. A guardian of a ward's estate appointed in this state may institute suits for the recovery of personal property, debts, or damages and suits for title to or possession of land or for any right attached to or growing out of the same or for injury or damage done. Judgment in those cases shall be conclusive but may be set aside by any person interested for fraud or collusion on the part of the guardian.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 52, eff. Sept. 1, 1995.

Sec. 774. EXERCISE OF POWER WITH OR WITHOUT COURT ORDER. (a) On application, and if authorized by an order, the guardian of the estate may renew or extend any obligation owed by or to the ward. On written application to the court and when a guardian of the estate deems it is in the best interest of the estate, the guardian may, if authorized by an order of the court:

- (1) purchase or exchange property;
- (2) take a claim or property for the use and benefit of the estate in payment of a debt due or owing to the estate;
- (3) compound a bad or doubtful debt due or owing to the estate;
- (4) make a compromise or a settlement in relation to property or a claim in dispute or litigation;
- (5) compromise or pay in full any secured claim that has been allowed and approved as required by law against the estate by conveying to the holder of the secured claim the real estate or personalty securing the claim, in full payment, liquidation, and satisfaction of the claim, and in consideration of cancellation of a note, deed of trust, mortgage, chattel mortgage, or other evidence of a lien that secures the payment of the claim;
- (6) abandon worthless or burdensome property and the administration of that property. Abandoned real or personal property may be foreclosed on by a secured party, trustee, or mortgagee without further order of the court;
- (7) purchase a prepaid funeral benefits contract; and
- (8) establish a trust in accordance with 42 U.S.C. Section 1396p(d)(4)(B), as amended, and direct that the income of the ward as defined by that section be paid directly to the trust, solely for the purpose of the ward's eligibility for medical assistance under Chapter 32, Human Resources Code.

(b) The guardian of the estate of a person, without application to or order of the court, may exercise the following powers provided, however, that a guardian may apply and obtain an order if doubtful of the propriety of the exercise of any such power:

- (1) release a lien on payment at maturity of the debt secured by the lien;
- (2) vote stocks by limited or general proxy;
- (3) pay calls and assessments;
- (4) insure the estate against liability in appropriate cases;
- (5) insure property of the estate against fire, theft, and other hazards; and
- (6) pay taxes, court costs, and bond premiums.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 77, Sec. 6, eff. Sept. 1, 1997;
Acts 2001, 77th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2001.
Subsec. (a) amended by Acts 2003, 78th Leg., ch. 549, Sec. 19, eff. Sept. 1, 2003.

Sec. 775. POSSESSION OF PROPERTY HELD IN COMMON OWNERSHIP. If the ward holds or owns any property in common, or as part owner with another person, the guardian of the estate is entitled to possession of the property of the ward held or owned in common with a part owner in the same manner as another owner in common or joint owner would be entitled.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 776. AMOUNTS ALLOWABLE FOR EDUCATION AND MAINTENANCE OF WARD. (a) Subject to Section 777 of this code, if a monthly allowance for the ward was not ordered in the court's order appointing a guardian, the guardian of the estate shall file an application with the court requesting a monthly allowance to be expended from the income and corpus of the ward's estate for the education and maintenance of the ward and the maintenance of the ward's property.

(a-1) The guardian must file the application requesting the monthly allowance not later than the 30th day after the date on which the guardian qualifies as guardian or the date specified by the court, whichever is later. The application must clearly separate amounts requested for education and maintenance of the ward from amounts requested for maintenance of the ward's property.

(a-2) In determining the amount of the monthly allowance for the ward and the ward's property, the court shall consider the condition of the estate and the income and corpus of the estate necessary to pay the reasonably anticipated regular education and maintenance expenses of the ward and maintenance expenses of the ward's property. The court's order setting a monthly allowance must specify the types of expenditures the guardian may make on a monthly basis for the ward or the ward's property. An order setting a monthly allowance does not affect the guardian's duty to account for expenditures of the allowance in the annual account required by Section 741 of this code.

(a-3) When different persons have the guardianship of the person and estate of a ward, the court's order setting a monthly allowance must specify the amount, if any, set by the court for the education and maintenance of the ward that the guardian of the estate shall pay and the amount, if any, the guardian of the estate shall pay to the guardian of the person, at a time specified by the court, for the education and maintenance of the ward. If the guardian of the estate fails to pay to the guardian of the person the monthly allowance set by the court, the guardian of the estate shall be compelled to make the payment by court order after the guardian is duly cited to appear.

(b) When a guardian has in good faith expended funds from the income and corpus of the estate of the ward for support and maintenance of the ward and the expenditures exceed the monthly allowance authorized by the court, the guardian shall file a motion with the court requesting approval of the expenditures. The court may approve the excess expenditures if:

(1) the expenditures were made when it was not convenient or possible for the guardian to first secure court approval;

(2) the proof is clear and convincing that the expenditures were reasonable and proper;

(3) the court would have granted authority in advance to make the expenditures; and

(4) the ward received the benefits of the expenditures.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 53, eff. Sept. 1, 1995.

Amended by Acts 2003, 78th Leg., ch. 549, Sec. 20, eff. Sept. 1, 2003; Subsec. (a-3) amended by Acts 2005, 79th Leg., ch. 200, Sec. 6, eff. Sept. 1, 2005.

Sec. 776A. SUMS ALLOWABLE FOR EDUCATION AND MAINTENANCE OF WARD'S SPOUSE OR DEPENDENT. (a) Subject to Section 777 of this code and on application to the court, the court may order the guardian of the estate of a ward to expend funds from the ward's estate for the education and maintenance of the ward's spouse or dependent.

(b) In determining whether to order the expenditure of funds from a ward's estate for the ward's spouse or dependent, as appropriate, in accordance with this section, the court shall consider:

(1) the circumstances of the ward, the ward's spouse, and the ward's dependents;

(2) the ability and duty of the ward's spouse to support himself or herself and the ward's dependent;

(3) the size of the ward's estate;

(4) a beneficial interest the ward or the ward's spouse or dependent has in a trust; and

(5) an existing estate plan, including a trust or will, that provides a benefit to the ward's spouse or dependent.

(c) A person who makes an application to the court under this section shall mail notice of the application by certified mail to all interested persons.

Added by Acts 1997, 75th Leg., ch. 77, Sec. 7, eff. Sept. 1, 1997.

Sec. 777. SUMS ALLOWED PARENTS FOR EDUCATION AND MAINTENANCE OF MINOR WARD. (a) Except as provided by Subsection (b) of this section, a parent who is the guardian of the person of a ward who is 17 years of age or younger may not use the income or the corpus from the ward's estate for the ward's support, education, or maintenance.

(b) A court with proper jurisdiction may authorize the guardian of the person to spend the income or the corpus from the ward's estate to support, educate, or maintain the ward if the guardian presents clear and convincing evidence to the court that the ward's parents are unable without unreasonable hardship to pay for all of the expenses related to the ward's support.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 778. TITLE OF WARDS NOT TO BE DISPUTED. A guardian or the heirs, executors, administrators, or assigns of a guardian may not dispute the right of the ward to any property that came into the possession of the guardian as guardian of the ward, except property that is recovered from the guardian or property on which there is a personal action pending.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 779. OPERATION OF FARM, RANCH, FACTORY, OR OTHER BUSINESS. If the ward owns a farm, ranch, factory, or other

business and if the farm, ranch, factory, or other business is not required to be sold at once for the payment of debts or other lawful purposes, the guardian of the estate on order of the court shall carry on the operation of the farm, ranch, factory, or other business, or cause the same to be done, or rent the same, as shall appear to be for the best interests of the estate. In deciding, the court shall consider the condition of the estate and the necessity that may exist for the future sale of the property or business for the payment of a debt, claim, or other lawful expenditure and may not extend the time of renting any of the property beyond what appears consistent with the maintenance and education of a ward or the settlement of the estate of the ward.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 780. ADMINISTRATION OF PARTNERSHIP INTEREST BY GUARDIAN. If the ward was a partner in a general partnership and the articles of partnership provide that, on the incapacity of a partner, the guardian of the estate of the partner is entitled to the place of the incapacitated partner in the firm, the guardian who contracts to come into the partnership shall, to the extent allowed by law, be liable to a third person only to the extent of the incapacitated partner's capital in the partnership and the assets of the estate of the partner that are held by the guardian. This section does not exonerate a guardian from liability for the negligence of the guardian.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 781. BORROWING MONEY. (a) The guardian may mortgage or pledge any real or personal property of a guardianship estate by deed of trust or otherwise as security for an indebtedness, under court order, when necessary for any of the following purposes:

(1) for the payment of any ad valorem, income, gift, or transfer taxes due from a ward, regardless of whether the taxes are assessed by a state, a political subdivision of the state, the federal government, or a foreign country;

(2) for the payment of any expenses of administration, including sums necessary for the operation of a business, farm, or ranch owned by the estate;

(3) for the payment of any claims allowed and approved, or established by suit, against the ward or the estate of the ward;

(4) to renew and extend a valid, existing lien;

(5) to make improvements or repairs to the real estate of the ward if:

(A) the real estate of the ward is not revenue producing but could be made revenue producing by certain improvements and repairs; or

(B) the revenue from the real estate could be increased by making improvements or repairs to the real estate;

(6) court-authorized borrowing of money that the court finds to be in the best interests of the ward for the purchase of a residence for the ward or a dependent of the ward; and

(7) if the guardianship is kept open after the death of the ward, funeral expenses of the ward and expenses of the ward's last illness.

(a-1) The guardian of the estate may also receive an extension of credit on the ward's behalf that is secured, wholly or partly, by a lien on real property that is the homestead of the ward, under court order, when necessary to:

(1) make improvements or repairs to the homestead; or

(2) pay for education or medical expenses of the ward.

(a-2) Proceeds of a home equity loan described by Subsection (a-1) of this section may be used only for the purposes authorized under Subsection (a-1) of this section and to pay the outstanding balance of the loan.

(b) When it is necessary to borrow money for any of the purposes authorized under Subsection (a) or (a-1) of this section, or to create or extend a lien on property of the estate as security, a sworn application for the authority to borrow money shall be filed with the court, stating fully and in detail the circumstances that the guardian of the estate believes make necessary the granting of the authority. On the filing of an application under this subsection, the clerk shall issue and cause to be posted a citation to all interested persons, stating the nature of the application and requiring the interested persons to appear and show cause why the application should not be granted.

(c) If the court is satisfied by the evidence adduced at the hearing on the application that it is in the interest of the ward or

the ward's estate to borrow money under Subsection (b) of this section, or to extend and renew an existing lien, the court shall issue an order to that effect, setting out the terms and conditions of the authority granted. The term of the loan or renewal shall be for the length of time that the court determines to be for the best interests of the ward or the ward's estate. If a new lien is created on the property of a guardianship estate, the court may require that the guardian's general bond be increased, or that an additional bond be given, for the protection of the guardianship estate and its creditors, as for the sale of real property belonging to the estate. Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Subsec. (a-1) added by Acts 2005, 79th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 2005; Subsec. (a-2) added by Acts 2005, 79th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 2005; Subsec. (b) amended by Acts 2005, 79th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 2005.

Sec. 782. POWERS, DUTIES, AND OBLIGATIONS OF GUARDIAN OF PERSON ENTITLED TO GOVERNMENT FUNDS. (a) A guardian of the person for whom it is necessary to have a guardian appointed to receive funds from a governmental source has the power to administer only the funds received from the governmental source, all earnings, interest, or profits derived from the funds, and all property acquired with the funds. The guardian has the power to receive the funds and pay out the expenses of administering the guardianship and the expenses for the support, maintenance, or education of the ward or the ward's dependents. Expenditures for the support, maintenance, or education of the ward or the ward's dependents may not exceed \$12,000 during any 12-month period without the court's approval.

(b) All acts performed before September 1, 1993, by guardians of the estate of a person for whom it is necessary to have a guardian appointed to receive and disburse funds that are due the person from a governmental source are validated if the acts are performed in conformance with orders of a court that has venue with respect to the support, maintenance, and education of the ward or the ward's dependents and the investment of surplus funds of the ward under this chapter and if the validity of the act is not an issue in a probate proceeding or civil lawsuit that is pending on September 1, 1993.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 54, eff. Sept. 1, 1995.

SUBPART G. CLAIMS PROCEDURES

Sec. 783. NOTICE BY GUARDIAN OF APPOINTMENT. (a) Within one month after receiving letters, personal representatives of estates shall send to the comptroller of public accounts by certified or registered mail if the ward remitted or should have remitted taxes administered by the comptroller of public accounts and publish in some newspaper, printed in the county where the letters were issued, if there be one, a notice requiring all persons having a claim against the estate being administered to present the claim within the time prescribed by law. The notice must include the time of issuance of letters held by the representative, the address to which a claim may be presented, and an instruction of the representative's choice that a claim be addressed in care of the representative, in care of the representative's attorney, or in care of "Representative, Estate of _____" (naming the estate).

(b) A copy of the printed notice, with the affidavit of the publisher, duly sworn to and subscribed before a proper officer, to the effect that the notice was published as provided in this chapter for the service of citation or notice by publication, shall be filed in the court in which the cause is pending.

(c) When no newspaper is printed in the county, the notice shall be posted and the return made and filed as required by this chapter.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 77, Sec. 8, eff. Sept. 1, 1997.

Sec. 784. NOTICE TO HOLDERS OF RECORDED CLAIMS. (a) Within four months after receiving letters, the guardian of an estate shall give notice of the issuance of the letters to each and every person having a claim for money against the estate of a ward if the claim is secured by a deed of trust, mortgage, or vendor's, mechanic's or other contractor's lien on real estate belonging to the estate.

(b) Within four months after receiving letters, the guardian of an estate shall give notice of the issuance of the

letters to each person having an outstanding claim for money against the estate of a ward if the guardian has actual knowledge of the claim.

(c) The notice stating the original grant of letter shall be given by mailing the notice by certified mail or registered letter, with return receipt requested, addressed to the record holder of the indebtedness or claim at the last known post office address of the record holder.

(d) A copy of each notice required by Subsection (a) of this section, with the return receipt and an affidavit of the representative, stating that the notice was mailed as required by law, giving the name of the person to whom the notice was mailed, if not shown on the notice or receipt, shall be filed in the court from which letters were issued.

(e) In the notice required by Subsection (b) of this section, the guardian of the estate may expressly state in the notice that the unsecured creditor must present a claim not later than the 120th day after the date on which the unsecured creditor receives the notice or the claim is barred, if the claim is not barred by the general statutes of limitation. The notice under this subsection must include:

(1) the address to which claims may be presented; and

(2) an instruction that the claim be filed with the clerk of the court issuing the letters of guardianship.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2001, 77th Leg., ch. 1174, Sec. 6, eff. Sept. 1, 2001.

Sec. 785. ONE NOTICE SUFFICIENT; PENALTY FOR FAILURE TO GIVE NOTICE. (a) If the notice required by Section 784 of this code has been given by a former representative, or by one when several representatives are acting, the notice given by the former representative or co-representative is sufficient and need not be repeated by any successor or co-representative.

(b) If the guardian fails to give the notice required in other sections of this chapter or to cause the notices to be given, the guardian and the sureties on the bond of the guardian shall be liable for any damage that any person suffers because of the neglect, unless it appears that the person had notice otherwise.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 786. CLAIMS AGAINST WARDS. (a) A claim may be presented to the guardian of the estate at any time when the estate is not closed and when suit on the claim has not been barred by the general statutes of limitation. A claim of an unsecured creditor for money that is not presented within the time prescribed by the notice of presentment permitted by Section 784(e) of this code is barred.

(b) A claim against a ward on which a suit is barred by a general statute of limitation applicable to the claim may not be allowed by a guardian. If allowed by the guardian and the court is satisfied that limitation has run, the claim shall be disapproved.
Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2001, 77th Leg., ch. 1174, Sec. 7, eff. Sept. 1, 2001.

Sec. 787. TOLLING OF GENERAL STATUTES OF LIMITATION. The general statutes of limitation are tolled:

(1) by filing a claim that is legally allowed and approved;
or

(2) by bringing a suit on a rejected and disapproved claim not later than the 90th day after the date of rejection or disapproval.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 788. CLAIMS MUST BE AUTHENTICATED. Except as provided by Section 792 of this code, with respect to the payment of an unauthenticated claim by a guardian, a guardian of the estate may not allow and the court may not approve a claim for money against the estate, unless the claim is supported by an affidavit that the claim is just and that all legal offsets, payments, and credits known to the affiant have been allowed. If the claim is not founded on a written instrument or account, the affidavit must also state the facts on which the claim is founded. A photostatic copy of an exhibit or voucher necessary to prove a claim under this section may be offered with and attached to the claim instead of the original.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2005, 79th Leg., ch. 200, Sec. 7, eff. Sept. 1, 2005.

Sec. 789. WHEN DEFECTS OF FORM ARE WAIVED. Any defect of

form or claim of insufficiency of exhibits or vouchers presented is deemed waived by the guardian unless written objection to the form, exhibit, or voucher is made not later than the 30th day after the date of presentment of the claim and is filed with the county clerk. Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 790. EVIDENCE CONCERNING LOST OR DESTROYED CLAIMS. If evidence of a claim is lost or destroyed, the claimant or a representative of the claimant may make affidavit to the fact of the loss or destruction, stating the amount, date, and nature of the claim and when due, that the claim is just, that all legal offsets, payments, and credits known to the affiant have been allowed, and that the claimant is still the owner of the claim. The claim must be proved by disinterested testimony taken in open court, or by oral or written deposition, before the claim is approved. If the claim is allowed or approved without the affidavit or if the claim is approved without satisfactory proof, the allowance or approval is void.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 791. AUTHENTICATION OF CLAIM BY OTHERS THAN INDIVIDUAL OWNERS. The cashier, treasurer, or managing official of a corporation shall make the affidavit required to authenticate a claim of the corporation. When an affidavit is made by an officer of a corporation, or by an executor, administrator, guardian, trustee, assignee, agent, or attorney, it is sufficient to state in the affidavit that the person making the affidavit has made diligent inquiry and examination and that the person believes that the claim is just and that all legal offsets, payments, and credits made known to the person making the affidavit have been allowed.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 792. GUARDIAN'S PAYMENT OF UNAUTHENTICATED CLAIMS. A guardian may pay an unauthenticated claim against the estate of the guardian's ward that the guardian believes to be just, but the guardian and the sureties on the bond of the guardian shall be liable for the amount of any payment of the claim if the court finds that the claim is not just.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 793. METHOD OF HANDLING SECURED CLAIMS. (a) When a secured claim against a ward is presented, the claimant shall specify in the claim, in addition to all other matters required to be specified in claims:

(1) whether the claim shall be allowed and approved as a matured secured claim to be paid in due course of administration, in which event it shall be so paid if allowed and approved; or

(2) whether the claim shall be allowed, approved, and fixed as a preferred debt and lien against the specific property securing the indebtedness and paid according to the terms of the contract that secured the lien, in which event it shall be so allowed and approved if it is a valid lien; provided, however, the guardian may pay the claim prior to maturity if it is in the best interests of the estate to do so.

(b) If a secured claim is not presented within the time provided by law, it shall be treated as a claim to be paid in accordance with Subsection (a)(2) of this section.

(c) When an indebtedness has been allowed and approved under Subsection (a)(2) of this section, no further claim shall be made against other assets of the estate because of the indebtedness, but the claim remains a preferred lien against the property securing the claim, and the property remains security for the debt in any distribution or sale of the property before final maturity and payment of the debt.

(d) If property that secures a claim allowed, approved, and fixed under Subsection (a)(2) of this section is not sold or distributed not later than the 12th month after the date letters of guardianship are granted, the guardian of the estate shall promptly pay all maturities that have accrued on the debt according to the terms of the maturities and shall perform all the terms of any contract securing the maturities. If the guardian defaults in the payment or performance, the court, on motion of the claim holder, shall require the sale of the property subject to the unmatured part of the debt and apply the proceeds of the sale to the liquidation of the maturities or, at the option of the claim holder, a motion may be made in a like manner to require the sale of the property free of the lien and to apply the proceeds to the payment of the whole debt. Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 794. CLAIMS PROVIDING FOR ATTORNEY'S FEES. If the

instrument that evidences or supports a claim provides for attorney's fees, the claimant may include as a part of the claim the portion of the fee that the claimant has paid or contracted to pay to an attorney to prepare, present, and collect the claim.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 795. DEPOSITING CLAIMS WITH CLERK. A claim may also be presented by depositing the claim, with vouchers and necessary exhibits and affidavit attached to the claim, with the clerk. The clerk, on receiving the claim, shall advise the guardian of the estate or the guardian's attorney by letter mailed to the last known address of the guardian of the deposit of the claim. If the guardian fails to act on the claim within 30 days after it is filed, the claim is presumed to be rejected. Failure of the clerk to give notice as required under this section does not affect the validity of the presentment or the presumption of rejection of the claim because not acted on within the 30-day period.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 796. MEMORANDUM OF ALLOWANCE OR REJECTION OF CLAIM. When a duly authenticated claim against a guardianship estate is presented to the guardian or filed with the clerk as provided by this subpart, the guardian shall, not later than the 30th day after the date the claim is presented or filed, endorse or annex to the claim a memorandum signed by the guardian stating the time of presentation or filing of the claim and that the guardian allows or rejects the claim, or what portion of the claim the guardian allows or rejects.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 797. FAILURE TO ENDORSE OR ANNEX MEMORANDUM. The failure of a guardian of an estate to endorse on or annex to a claim presented to the guardian, or the failure of a guardian to allow or reject the claim or portion of the claim within 30 days after the claim was presented constitutes a rejection of the claim. If the claim is later established by suit, the costs shall be taxed against the guardian, individually, or the guardian may be removed as in other cases of removal on the written complaint of any person interested in the claim, after personal service of citation, hearing, and proof.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 798. CLAIMS ENTERED IN DOCKET. After a claim against a ward's estate has been presented to and allowed by the guardian, either in whole or in part, the claim shall be filed with the county clerk of the proper county who shall enter it on the claim docket.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 799. CONTEST OF CLAIMS, ACTION BY COURT, AND APPEALS. (a) Any person interested in a ward, at any time before the court has acted on a claim, may appear and object in writing to the approval of the claim, or any part of the claim. The parties are entitled to process for witnesses, and the court shall hear proof and render judgment as in ordinary suits.

(b) The court shall either approve in whole or in part or reject a claim that has been allowed and entered on the claim docket for a period of 10 days and shall at the same time classify the claim.

(c) Although a claim may be properly authenticated and allowed, if the court is not satisfied that it is just, the court shall examine the claimant and the guardian under oath and hear other evidence necessary to determine the issue. If after the examination and hearing the court is not convinced that the claim is just, the court shall disapprove the claim.

(d) When the court has acted on a claim, the court shall endorse on or annex to the claim a written memorandum dated and signed officially that states the exact action taken by the court on the claim, whether the court approved or disapproved the claim or approved in part or rejected in part the claim, and that states the classification of the claim. An order under this subsection has the force and effect of a final judgment.

(e) When a claimant or any person interested in a ward is dissatisfied with the action of the court on a claim, the claimant or person interested may appeal the action to the courts of appeals, as from other judgments of the county court in probate matters.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 800. SUIT ON REJECTED CLAIM. When a claim or a part of a claim has been rejected by the guardian, the claimant shall institute suit on the claim in the court of original probate jurisdiction in which the guardianship is pending or in any other

court of proper jurisdiction not later than the 90th day after the date of the rejection of the claim or the claim is barred. When a rejected claim is sued on, the endorsement made on or annexed to the claim is taken to be true without further proof, unless denied under oath. When a rejected claim or part of a claim has been established by suit, no execution shall issue but the judgment shall be certified not later than the 30th day after the date of rendition if the judgment is from a court other than the court of original probate jurisdiction, filed in the court in which the cause is pending entered on the claim docket, classified by the court, and handled as if originally allowed and approved in due course of administration.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 801. PRESENTMENT OF CLAIMS A PREREQUISITE FOR JUDGMENT. (a) A judgment may not be rendered in favor of a claimant on any claim for money that has not been legally presented to the guardian of the estate of the ward and rejected by the guardian or by the court, in whole or in part.

(b) Subsection (a) does not apply to a claim for delinquent ad valorem taxes against the estate of a ward that is being administered in probate in a county other than the county in which the taxes were imposed.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1999, 76th Leg., ch. 1481, Sec. 38, eff. Sept. 1, 1999.

Sec. 802. COSTS OF SUIT WITH RESPECT TO CLAIMS. All costs incurred in the probate court with respect to claims are taxed as follows:

(1) if allowed and approved, the guardianship estate shall pay the costs;

(2) if allowed, but disapproved, the claimant shall pay the costs;

(3) if rejected, but established by suit, the guardianship estate shall pay the costs;

(4) if rejected, but not established by suit, the claimant shall pay the costs; or

(5) in suits to establish a claim after rejection in part, if the claimant fails to recover judgment for a greater amount than was allowed or approved, the claimant shall pay all costs.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 803. CLAIMS BY GUARDIANS. (a) A claim that a guardian of the person or estate held against the ward at the time of the appointment of the guardian, or that has since accrued, shall be verified by affidavit as required in other cases and presented to the clerk of the court in which the guardianship is pending. The clerk shall enter the claim on the claim docket, after which it shall take the same course as other claims.

(b) When a claim by a guardian has been filed with the court within the required time, the claim shall be entered on the claim docket and acted on by the court in the same manner as in other cases. When the claim has been acted on by the court, an appeal from the judgment of the court may be taken as in other cases.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 804. CLAIMS NOT TO BE PAID UNLESS APPROVED. Except as provided for payment at the risk of a guardian of an unauthenticated claim, a claim for money against the estate of a ward or any part of a claim may not be paid until it has been approved by the court or established by the judgment of a court of competent jurisdiction.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 805. ORDER OF PAYMENT OF CLAIMS. (a) The guardian shall pay a claim against the estate of the guardian's ward that has been allowed and approved or established by suit, as soon as practicable, in the following order, except as provided by Subsection (b) of this section:

(1) expenses for the care, maintenance, and education of the ward or the ward's dependents;

(2) funeral expenses of the ward and expenses of the ward's last illness, if the guardianship is kept open after the death of the ward as provided under this chapter, except that any claim against the estate of a ward that has been allowed and approved or established by suit before the death of the ward shall be paid before the funeral expenses and expenses of the last illness;

(3) expenses of administration; and

(4) other claims against the ward or the ward's estate.

(b) If the estate is insolvent, the guardian shall give

first priority to the payment of a claim relating to the administration of the guardianship. The guardian shall pay other claims against the ward's estate in the order prescribed by Subsection (a) of this section.

(c) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by the applicable statute of limitations and on due proof procure an order for its allowance and payment from the estate.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1403, Sec. 5, eff. Sept. 1, 1997.

Sec. 806. DEFICIENCY OF ASSETS. When there is a deficiency of assets to pay all claims of the same class, the claims in the same class shall be paid pro rata, as directed by the court, and in the order directed. A guardian may not be allowed to pay any claims, whether the estate is solvent or insolvent, except with the pro rata amount of the funds of the guardianship estate that have come to hand.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 807. GUARDIAN NOT TO PURCHASE CLAIMS. A guardian may not purchase for the guardian's own use or for any purposes whatsoever a claim against the guardianship the guardian represents. On written complaint by a person interested in the guardianship estate and satisfactory proof of violation of this provision, the court after citation and hearing shall enter its order cancelling the claim and no part of the claim shall be paid out of the guardianship. The judge may remove the guardian for a violation of this section.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 808. PROCEEDS OF SALE OF MORTGAGED PROPERTY. When a guardian has on hand the proceeds of a sale that has been made for the satisfaction of a mortgage or other lien and the proceeds, or any part of the proceeds, are not required for the payment of any debts against the estate that have a preference over the mortgage or other lien, the guardian shall pay the proceeds to a holder of the mortgage or other lien. If the guardian fails to pay the proceeds as required by this section, the holder, on proof of the mortgage or other lien, may obtain an order from the court directing the payment to be made.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 809. LIABILITY FOR NONPAYMENT OF CLAIMS. (a) If a guardian of an estate fails to pay on demand any money ordered by the court to be paid to any person, except to the state treasury, when there are funds of the guardianship estate available, the person or claimant entitled to the payment, on affidavit of the demand and failure to pay, is authorized to have execution issued against the property of the guardianship for the amount due, with interest and costs.

(b) On return of the execution not satisfied, or merely on the affidavit of demand and failure to pay, the court may cite the guardian and the sureties on the bond of the guardian to show cause why the guardian or the sureties should not be held liable for the debt, interest, costs, or damages. On return of citation duly served, if good cause to the contrary is not shown, the court shall render judgment against the guardian and sureties that are cited under this subsection in favor of the holder of the claim for the unpaid amount ordered to be paid or established by suit, with interest and costs, and for damages on the amount neglected to be paid, at the rate of five percent per month for each month or fraction of a month that the payment was neglected to be paid after demand was made for payment. The damages may be collected in any court of competent jurisdiction.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

SUBPART H. SALES

Sec. 811. COURT MUST ORDER SALES. Except as provided by this subpart, the sale of any property of the ward may not be made without an order of court authorizing the sale. The court may order property sold for cash or on credit, at public auction or privately, as it may consider most to the advantage of the estate, except when otherwise specifically provided in this chapter.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 812. CERTAIN PERSONAL PROPERTY TO BE SOLD. (a) The guardian of an estate, after approval of inventory and appraisal, shall promptly apply for an order of the court to sell at public auction or privately, for cash or on credit not exceeding

six months, all of the estate that is liable to perish, waste, or deteriorate in value or that will be an expense or disadvantage to the estate if kept. Property exempt from forced sale, a specific legacy, or personal property necessary to carry on a farm, ranch, factory, or any other business that it is thought best to operate, may not be included in a sale under this section.

(b) In determining whether to order the sale of an asset under Subsection (a) of this section, the court shall consider:

(1) the guardian's duty to take care of and manage the estate as a person of ordinary prudence, discretion, and intelligence would exercise in the management of the person's own affairs; and

(2) whether the asset constitutes an asset that a trustee is authorized to invest under Chapter 117 or Subchapter F, Chapter 113, Property Code.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993; Subsec. (b) amended by Acts 2003, 78th Leg., ch. 1103, Sec. 15, eff. Jan. 1, 2004.

Sec. 813. SALES OF OTHER PERSONAL PROPERTY. On application by the guardian of the estate or by any interested person, the court may order the sale of any personal property of the estate not required to be sold by Section 812 of this code, including growing or harvested crops or livestock but not including exempt property, if the court finds that the sale of the property would be in the best interests of the ward or the ward's estate in order to pay expenses of the care, maintenance, and education of the ward or the ward's dependents, expenses of administration, allowances, or claims against the ward or the ward's estate, and funeral expenses of the ward and expenses of the ward's last illness, if the guardianship is kept open after the death of the ward, from the proceeds of the sale of the property. Insofar as possible, applications and orders for the sale of personal property must conform to the requirements set forth under this chapter for applications and orders for the sale of real estate.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 814. SPECIAL PROVISIONS PERTAINING TO LIVESTOCK. (a) When the guardian of an estate has in the guardian's possession any livestock that the guardian deems necessary or to the advantage of the estate to sell, the guardian may, in addition to any other method provided by law for the sale of personal property, obtain authority from the court in which the estate is pending to sell the livestock through a bonded livestock commission merchant or a bonded livestock auction commission merchant.

(b) On written and sworn application by the guardian or by any person interested in the estate that describes the livestock sought to be sold and that sets out the reasons why it is deemed necessary or to the advantage of the estate that the application be granted, the court may authorize the sale. The court shall consider the application and may hear evidence for or against the application, with or without notice, as the facts warrant.

(c) If the application is granted, the court shall enter its order to that effect and shall authorize delivery of the livestock to any bonded livestock commission merchant or bonded livestock auction commission merchant for sale in the regular course of business. The commission merchant shall be paid the merchant's usual and customary charges, not to exceed five percent of the sale price, for the sale of the livestock. A report of the sale, supported by a verified copy of the merchant's account of sale, shall be made promptly by the guardian to the court, but no order of confirmation by the court is required to pass title to the purchaser of the livestock.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 2003, 78th Leg., ch. 549, Sec. 21, eff. Sept. 1, 2003.

Sec. 815. SALES OF PERSONAL PROPERTY AT PUBLIC AUCTION. All sales of personal property at public auction shall be made after notice has been issued by the guardian of the estate and posted as in case of posting for original proceedings in probate, unless the court shall otherwise direct.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 816. SALES OF PERSONAL PROPERTY ON CREDIT. No more than six months' credit may be allowed when personal property is sold at public auction, based on the date of the sale. The purchaser shall be required to give his note for the amount due, with good and solvent personal security, before delivery of the property can be

made to the purchaser, but security may be waived if delivery is not to be made until the note, with interest, has been paid.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 817. SALE OF MORTGAGED PROPERTY. On the filing of a written application, a creditor who holds a claim that is secured by a valid mortgage or other lien and that has been allowed and approved or established by suit may obtain from the court in which the guardianship is pending an order that the property, or so much of the property as necessary to satisfy the creditor's claim, shall be sold. On the filing of the application, the clerk shall issue citation requiring the guardian of the estate to appear and show cause why an application filed under this section should not be granted. If it appears to the court that it would be advisable to discharge the lien out of the general assets of the estate or that it be refinanced, the court may so order. Otherwise, the court shall grant the application and order that the property be sold at public or private sale, as the court considers best, as in ordinary cases of sales of real estate.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 818. SALES OF PERSONAL PROPERTY REPORTED; DECREE VESTS TITLE. All sales of personal property shall be reported to the court. The laws regulating the confirmation or disapproval of sales of real estate apply to sales of personal property, but no conveyance shall be necessary. The decree confirming the sale of personal property shall vest the right and title of the estate of the ward in the purchaser who has complied with the terms of the sale and shall be prima facie evidence that all requirements of the law in making the sale have been met. The guardian of an estate may, on request, issue a bill of sale without warranty to the purchaser as evidence of title. The expense of the bill of sale if requested is to be borne by the purchaser.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 819. SELECTION OF REAL PROPERTY SOLD FOR PAYMENT OF DEBTS. Real property of the ward that is selected to be sold for the payment of expenses or claims shall be that property that the court deems most advantageous to the guardianship to be sold.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 820. APPLICATION FOR SALE OF REAL ESTATE. An application may be made to the court for an order to sell real property of the estate when it appears necessary or advisable in order to:

- (1) pay expenses of administration, allowances, and claims against the ward or the ward's estate, and to pay funeral expenses of the ward and expenses of the ward's last illness, if the guardianship is kept open after the death of the ward;

- (2) make up the deficiency when the income of a ward's estate, the personal property of the ward's estate, and the proceeds of previous sales, are insufficient to pay for the education and maintenance of the ward or to pay debts against the estate;

- (3) dispose of property of the ward's estate that consists in whole or in part of an undivided interest in real estate when it is deemed in the best interests of the estate to sell the interest;

- (4) dispose of real estate of a ward, any part of which is nonproductive or does not produce sufficient revenue to make a fair return on the value of the real estate, when the improvement of the real estate with a view to making it productive is not deemed advantageous or advisable and it appears that the sale of the real estate and the investment of the money derived from the sale of the real estate would be in the best interests of the estate; or

- (5) conserve the estate of a ward by selling mineral interest or royalties on minerals in place owned by a ward.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 821. CONTENTS OF APPLICATION FOR SALE OF REAL ESTATE. An application for the sale of real estate shall be in writing, must describe the real estate or an interest in or part of the real estate sought to be sold, and shall be accompanied by an exhibit, verified by affidavit that shows fully and in detail:

- (1) the condition of the estate;

- (2) the charges and claims that have been approved or established by suit, or that have been rejected and may be established later;

- (3) the amount of each claim that has been approved or established by suit, or that has been rejected but may be established later;

(4) the property of the estate remaining on hand liable for the payment of those claims; and

(5) any other facts that show the necessity or advisability of the sale.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 822. SETTING OF HEARING ON APPLICATION. When an application for the sale of real estate is filed, it shall immediately be called to the attention of the judge by the clerk. The judge shall designate in writing a day for hearing the application, any opposition to the application, and any application for the sale of other land, with the evidence pertaining to the application. The judge may, by entries on the docket, continue the hearing from time to time until the judge is satisfied concerning the application.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 823. CITATION AND RETURN ON APPLICATION. On the filing of an application for the sale of real estate under Section 820 of this code and exhibit, the clerk shall issue a citation to all persons interested in the guardianship that describes the land or interest or part of the land or interest sought to be sold and that requires the persons to appear at the time set by the court as shown in the citation and show cause why the sale should not be made, if they so elect. Service of citation shall be by posting.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 824. OPPOSITION TO APPLICATION. When an application for an order of sale is made, a person interested in the guardianship, before an order of sale is made by the court, may file the person's opposition to the sale, in writing, or may make application for the sale of other property of the estate.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 825. ORDER OF SALE. If satisfied on hearing that the sale of the property of the guardianship described in the application made under Section 820 of this code is necessary or advisable, the court shall order the sale to be made. Otherwise, the court may deny the application and, if the court deems best, may order the sale of other property the sale of which would be more advantageous to the estate. An order for the sale of real estate must specify:

(1) the property to be sold, giving a description that will identify the property;

(2) whether the property is to be sold at public auction or at private sale, and, if at public auction, the time and place of the sale;

(3) the necessity or advisability of the sale and its purpose;

(4) except in cases in which no general bond is required, that, having examined the general bond of the representative of the estate, the court finds it to be sufficient as required by law, or finds the bond to be insufficient and specifies the necessary or increased bond;

(5) that the sale shall be made and the report returned in accordance with law; and

(6) the terms of the sale.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 826. PROCEDURE WHEN GUARDIAN NEGLECTS TO APPLY FOR SALE. When the guardian of an estate neglects to apply for an order to sell sufficient property to pay the charges and claims against the estate that have been allowed and approved or established by suit, an interested person, on written application, may cause the guardian to be cited to appear and make a full exhibit of the condition of the estate, and show cause why a sale of the property should not be ordered. On hearing an application made under this section, if the court is satisfied that a sale of the property is necessary or advisable in order to satisfy the claims, it shall enter an order of sale as provided by Section 825 of this code.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 827. PERMISSIBLE TERMS OF SALE OF REAL ESTATE. (a) The real estate may be sold for cash, or for part cash and part credit, or the equity in land securing an indebtedness may be sold subject to the indebtedness, or with an assumption of the indebtedness, at public or private sale, as appears to the court to be in the best interests of the estate. When real estate is sold partly on credit, the cash payment may not be less than one-fifth of the purchase price, and the purchaser shall execute a note for the deferred payments payable in monthly, quarterly, semiannual or annual

installments, of the amounts as appear to the court to be for the best interests of the guardianship, to bear interest from date at a rate of not less than four percent per annum, payable as provided in the note. Default in the payment of principal or interest, or any part of the payment when due, at the election of the holder of the note, matures the whole debt. The note shall be secured by vendor's lien retained in the deed and in the note on the property sold and shall be further secured by deed of trust on the property sold, with the usual provisions for foreclosure and sale on failure to make the payments provided in the deed and the note.

(b) When an estate owning real estate by virtue of foreclosure of a vendor's lien or mortgage belonging to the estate either by judicial sale or by a foreclosure suit, by sale under deed of trust, or by acceptance of a deed in cancellation of a lien or mortgage owned by the estate, and it appears to the court that an application to redeem the property foreclosed on has been made by the former owner of the real estate to any corporation or agency created by any act of the Congress of the United States or of this state in connection with legislation for the relief of owners of mortgaged or encumbered homes, farms, ranches, or other real estate and that it would be in the best interests of the estate to own bonds of one of the above named federal or state corporations or agencies instead of the real estate, then on proper application and proof, the court may dispense with the provisions of credit sales as provided by Subsection (a) of this section, and may order reconveyance of the property to the former mortgage debtor, or former owner, reserving vendor's lien notes for the total amount of the indebtedness due or for the total amount of bonds that the corporation or agency above named is under its rules and regulations allowed to advance. On obtaining the order, it shall be proper for the guardian to endorse and assign the notes so obtained over to any one of the corporations or agencies above named in exchange for bonds of that corporation or agency.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 828. PUBLIC SALE OF REAL ESTATE. (a) Except as otherwise provided by this chapter, all public sales of real estate shall be advertised by the guardian of the estate by a notice published in the county in which the estate is pending, as provided by this chapter for publication of notices or citations. A reference in the notice shall be made to the order of sale, the time, place, and the required terms of sale, and a brief description of the property to be sold. A reference made under this section does not have to contain field notes, but if the real estate consists of rural property, the name of the original survey, the number of acres, its locality in the county, and the name by which the land is generally known must be contained in the reference.

(b) All public sales of real estate shall be made at public auction to the highest bidder.

(c) All public sales of real estate shall be made in the county in which the guardianship proceedings are pending, at the courthouse door of the county, or at another place in the county where sales of real estate are specifically authorized to be made, on the first Tuesday of the month after publication of notice has been completed, between the hours of 10 a.m. and 4 p.m. If deemed advisable by the court, the court may order the sale to be made in the county in which the land is located, in which event notice shall be published both in that county and in the county in which the proceedings are pending.

(d) If a sale is not completed on the day advertised, the sale may be continued from day to day by making an oral public announcement of the continuance at the conclusion of the sale each day. The continued sale is to be made within the same hours as prescribed by Subsection (c) of this section. If sales are so continued, the fact shall be shown in the report of sale made to the court.

(e) When a person who bids on property of a guardianship estate offered for sale at public auction fails to comply with the terms of sale, the property shall be readvertised and sold without any further order. The person who defaults shall be liable to pay to the guardian of the estate, for the benefit of the estate, 10 percent of the amount of the person's bid and any deficiency in price on the second sale. The guardian shall recover the amounts by suit in any court in the county in which the sale was made that has jurisdiction over the amount claimed.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 829. PRIVATE SALE OF REAL ESTATE. All private sales of real estate shall be made in the manner the court directs in its order of sale, and no further advertising, notice, or citation concerning the sale shall be required unless the court shall direct otherwise.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 830. SALES OF EASEMENTS AND RIGHTS OF WAY. The guardian may sell and convey easements and rights of way on, under, and over the land of a guardianship estate that is being administered under orders of a court, regardless of whether the proceeds of the sale are required for payment of charges or claims against the estate, or for other lawful purposes. The procedure for the sale is the same as provided by law for a sale of real property of wards at private sale.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 831. GUARDIAN PURCHASING PROPERTY OF THE ESTATE. (a) Except as provided by Subsection (b) or (c) of this section, the guardian of an estate may not purchase, directly or indirectly, any property of the estate sold by the guardian, or by any co-representative of a guardian.

(b) A guardian may purchase property from the estate in compliance with the terms of a written executory contract signed by the ward before the ward became incapacitated, including a contract for deed, earnest money contract, buy/sell agreement, or stock purchase or redemption agreement.

(c) A guardian of an estate may purchase property from the estate on the court's determination that the sale is in the best interest of the estate. In the case of an application filed by the guardian of the estate of a ward, the court shall appoint an attorney ad litem to represent the ward with respect to the sale. The court may require notice for a sale made under this subsection.

(d) If a purchase is made in violation of this section, a person interested in the estate may file a written complaint with the court in which the guardianship proceedings are pending. On service of citation on the guardian and after hearing and proof, the court shall declare the sale void, set aside the sale, and order that the property be reconveyed to the estate. All costs of the sale, protest, and suit, if found necessary, shall be adjudged against the guardian.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Subsec. (c) amended by Acts 2005, 79th Leg., ch. 200, Sec. 8, eff. Sept. 1, 2005.

Sec. 832. REPORT OF SALE. A sale of real property of an estate shall be reported to the court that orders the sale not later than the 30th day after the date the sale is made. A report must be in writing, sworn to, filed with the clerk, and noted on the probate docket. A report made under this section must contain:

- (1) the date of the order of sale;
- (2) a description of the property sold;
- (3) the time and place of sale;
- (4) the name of the purchaser;
- (5) the amount for which each parcel of property or interest in the parcel of property was sold;
- (6) the terms of the sale, and whether the sale was private or made at a public auction; and
- (7) whether the purchaser is ready to comply with the order of sale.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 833. BOND ON SALE OF REAL ESTATE. If the guardian of the estate is not required by this chapter to furnish a general bond, the court may confirm the sale if the court finds the sale is satisfactory and in accordance with law. Otherwise, before a sale of real estate is confirmed, the court shall determine whether the general bond of the guardian is sufficient to protect the estate after the proceeds of the sale are received. If the court finds the bond is sufficient, the court may confirm the sale. If the general bond is found by the court to be insufficient, the court may not confirm the sale until the general bond is increased to the amount required by the court, or an additional bond is given and approved by the court. The increase in the amount of the bond, or the additional bond, shall be equal to the amount for which the real estate is sold in addition to any additional sum the court finds necessary and sets for the protection of the estate. If the real estate sold is encumbered by a lien to secure a claim against the estate, is sold to the owner or holder of the secured claim, and is

in full payment, liquidation, and satisfaction of the claim, an increased general bond or additional bond may not be required except for the amount of cash actually paid to the guardian of the estate in excess of the amount necessary to pay, liquidate, and satisfy the claim in full.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 834. ACTION OF COURT ON REPORT OF SALE. After the expiration of five days from the date a report of sale is filed under Section 832 of this code, the court shall inquire into the manner in which the sale was made, hear evidence in support of or against the report, and determine the sufficiency or insufficiency of the guardian's general bond, if any has been required and given. If the court is satisfied that the sale was for a fair price, was properly made, and conforms with the law and the court has approved any increased or additional bond that may have been found necessary to protect the estate, the court shall enter a decree confirming the sale showing conformity with other provisions of this chapter relating to the sale and authorizing the conveyance of the property to be made by the guardian of the estate on compliance by the purchaser with the terms of the sale, detailing those terms. If the court is not satisfied that the sale was for a fair price, was properly made, and conforms with the law, the court shall issue an order that sets the sale aside and order a new sale to be made, if necessary. The action of the court in confirming or disapproving a report of sale has the force and effect of a final judgment. Any person interested in the guardianship estate or in the sale has the right to have the decrees reviewed as in other final judgments in probate proceedings.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 835. DEED CONVEYS TITLE TO REAL ESTATE. When real estate is sold, the conveyance of real estate shall be by proper deed that refers to and identifies the decree of the court that confirmed the sale. The deed shall vest in the purchaser all right, title, and interest of the estate to the property and shall be prima facie evidence that the sale has met all applicable requirements of the law.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 836. DELIVERY OF DEED, VENDOR'S LIEN, AND DEED OF TRUST LIEN. After a sale is confirmed by the court and one purchaser has complied with the terms of sale, the guardian of the estate shall execute and deliver to the purchaser a proper deed conveying the property. If the sale is made partly on credit, the vendor's lien securing a purchase money note shall be expressly retained in the deed and may not be waived. Before actual delivery of the deed to the purchaser, the purchaser shall execute and deliver to the guardian of the estate a vendor's lien note, with or without personal sureties as the court has ordered and a deed of trust or mortgage on the property as further security for the payment of the note. On completion of the transaction, the guardian shall promptly file and record in the appropriate records in the county where the land is located the deed of trust or mortgage.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 837. PENALTY FOR NEGLECT. If the guardian of an estate neglects to comply with Section 836 of this code or fails to file the deed of trust securing the lien in the proper county, the guardian, after complaint and citation, may be removed. The guardian and the sureties on the bond of the guardian shall be held liable for the use of the estate and for all damages resulting from the neglect of the guardian. Damages under this section may be recovered in a court of competent jurisdiction.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

SUBPART I. HIRING AND RENTING

Sec. 839. HIRING OR RENTING WITHOUT ORDER OF COURT. The guardian of an estate, without court order, may rent any real property of the estate or hire out any personal property of the estate for one year or less, either at public auction or privately, as may be deemed in the best interests of the estate.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 840. LIABILITY OF GUARDIAN. If property of the guardianship estate is hired or rented without court order, on the sworn complaint of any person interested in the estate, the guardian of the estate shall be required to account to the estate for the reasonable value of the hire or rent of the property to be ascertained by the court on satisfactory evidence.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 841. ORDER TO HIRE OR RENT. A guardian of an estate may file a written application with the court setting forth the property sought to be hired or rented. If the proposed rental period is one year or more, the guardian of the estate shall file a written application with the court setting forth the property sought to be hired or rented. If the court finds that it would be in the interests of the estate, the court shall grant the application and issue an order that describes the property to be hired or rented and states whether the hiring or renting shall be at public auction or privately, whether for cash or on credit, and, if on credit, the extent of the credit and the period for which the property may be rented. If the property is to be hired or rented at public auction, the court shall prescribe whether notice shall be published or posted.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 842. PROCEDURE IN CASE OF NEGLECT TO RENT PROPERTY. A person interested in a guardianship may file a written and sworn complaint in a court in which the estate is pending and cause the guardian of the estate to be cited to appear and show cause why the guardian did not hire or rent any property of the estate. The court, on hearing the complaint, shall make an order that is in the best interests of the estate.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 843. PROPERTY HIRED OR RENTED ON CREDIT. When property is hired or rented on credit, possession of the property may not be delivered until the hirer or renter has executed and delivered to the guardian of the estate a note with good personal security for the amount of the hire or rental. If the property that is hired or rented is delivered without the receipt of the security required under this section, the guardian and the sureties on the bond of the guardian shall be liable for the full amount of the hire or rental. This section does not apply to a hire or rental that is paid in installments in advance of the period of time to which they relate.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 844. PROPERTY HIRED OR RENTED RETURNED IN GOOD CONDITION. All property that is hired or rented, with or without a court order, shall be returned to the possession of the guardianship in as good a condition, reasonable wear and tear excepted, as when the property was hired or rented. It shall be the duty and responsibility of the guardian of the estate to see that the property is returned as provided by this section, to report to the court any loss, damage, or destruction of property that is hired or rented under this chapter, and to ask for authority to take action as is necessary. If the guardian fails to act as required by this section, the guardian and the sureties on the bond of the guardian shall be liable to the guardianship for any loss or damage suffered through the fault of the guardian to act as required under this section.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

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

- (1) the property involved and its appraised value;
- (2) the date of hiring or renting, and whether at public auction or privately;
- (3) the name of the person who hired or rented the property;
- (4) the amount of the hiring or rental; and
- (5) whether the hiring or rental was for cash or on credit, and, if on credit, the length of time, the terms, and the security taken for the hiring or rental.

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

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 846. COURT ACTION ON REPORT. After five days from the time the report of the hiring or rental is filed, the court shall examine the report and shall approve and confirm the hiring or rental by court order if the court finds the hire or rental just and reasonable. If the court disapproves the hiring or rental, the guardianship may not be bound and the court may order another offering of the property for hire or rent in the same manner and subject to the same rules provided in this chapter for property for hire or rent. If the report has been approved by the court and it

later appears that, due to the fault of the guardian of the estate, the property has not been hired or rented for its reasonable value, the court shall cause the guardian of the estate and the sureties on the bond of the guardian to appear and show cause why the reasonable value of the hire or rental of the property should not be adjudged against the guardian or sureties.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

SUBPART J. MINERAL LEASES, POOLING OR UNITIZATION AGREEMENTS, AND
OTHER MATTERS RELATING TO MINERAL PROPERTIES

Sec. 847. MINERAL LEASES AFTER PUBLIC NOTICE. (a) In this subpart:

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

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

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

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

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

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

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

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

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

(e) When an application to lease is filed, under this section, the county clerk shall immediately call the filing of the application to the attention of the court. The judge shall promptly make and enter a brief order designating the time and place for the hearing of the application. If the hearing does not take place at the time originally designated by the court or by timely order of continuance duly entered, the hearing shall be automatically continued without further notice to the same hour or time the following day, except Sundays and holidays on which the county courthouse is officially closed to business, and from day to day until the application is finally acted on and disposed of by order of the court. No notice of the automatic continuance shall be required.

(f) The guardian shall give written notice directed to all persons interested in the estate of the time designated by the judge for the hearing on the application to lease. The notice must be dated, state the date on which the application was filed, describe briefly the property sought to be leased, specify the fractional interest sought to be leased if less than the entire interest in the tract identified, and state the time and place designated by the judge for the hearing. Exclusive of the date of notice and of the date set for hearing, the guardian shall give at least 10 days' notice by publishing in one issue of a newspaper of general circulation in the county in which the proceeding is pending or by

posting if there is no newspaper in the county. Posting under this section may be done at the guardian's instance. The date of notice when published shall be the date the newspaper bears.

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

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

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

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

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

(1) the name of the lessee;

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

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

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

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

(j) On the hearing of an application for authority to lease, if the court grants the authority to lease, the guardian of the estate is fully authorized to make, not later than the 30th day after the date of the judge's order, unless an extension is granted by the court on a sworn application showing good cause, the lease as evidenced by the true exhibit copies in accordance with the order. Unless the guardian is not required to give a general bond, a lease for which a cash consideration is required, though ordered, executed, and delivered, is not valid unless the order authorizing the lease actually makes a finding with respect to the general bond. If the general bond has been found insufficient, the lease is not valid until the bond has been increased or an additional bond given with the sureties required by law as required by the court order, has been approved by the judge, and has been filed with the clerk of the court in which the proceeding is pending. If two or more leases on different lands are authorized by the same order, the general bond shall be increased or additional bonds given to cover all. It is not necessary for the judge to make any order confirming the leases.

(k) Every lease when executed and delivered in compliance with the rules set out in this section shall be valid and binding on the property or interest owned by the estate and covered by the

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

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

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

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 848. MINERAL LEASES AT PRIVATE SALE. (a) Notwithstanding the mandatory requirements for setting a time and place for hearing of an application to lease under Section 847 of this code and the issuance, service, and return of notice, the court may authorize the making of oil, gas, and mineral leases at private sale without public notice or advertising if, in the opinion of the court, sufficient facts are set out in the application to show that it would be more advantageous to the estate that a lease be made privately and without compliance with the mandatory requirements under Section 847 of this code. Leases authorized under this section may include pooling provisions or unitization clauses as in other cases.

(b) At any time after the expiration of five days and before the expiration of the 10th day after the date of filing and without an order setting the time and place of hearing, the court shall hear the application to lease at a private sale. The court shall inquire into the manner in which the proposed lease has been or will be made and shall hear evidence for or against the application. If the court is satisfied that the lease has been or will be made for a fair and sufficient consideration and on fair terms and has been or will be properly made in conformity with the law, the court shall enter an order authorizing the execution of the lease without the necessity of advertising, notice, or citation. An order entered under this subsection must comply in all other respects with the requirements essential to the validity of mineral leases set out in this chapter as if advertising or notice were required. An order that confirms a lease made at a private sale does not need to be issued. A lease made at a private sale is not valid until the increased or additional bond required by the court, if any, has been approved by the court and filed with the clerk of the court.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 849. POOLING OR UNITIZATION OF ROYALTY OR MINERALS. (a) When an existing lease on property owned by the estate does not adequately provide for pooling or unitization, the court may authorize the commitment of royalty or mineral interests in oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, and other minerals or any one or more of them owned by the estate being administered to agreements that provide for the operation of areas as a pool or unit for the exploration, development, and production of all those minerals, if the court finds that the pool or unit to which the agreement relates will be operated in such a manner as to protect correlative rights, or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other mineral subject thereto, and that it is in the best interests of the estate to execute the agreement. Any agreement so authorized to be executed may provide that:

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

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

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

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

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

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

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

(c) The guardian of the estate shall file with the county clerk of the county in which the guardianship proceeding is pending the guardian's written application for authority to enter into a pooling or unitization agreement supplementing, amending, or otherwise relating to, any existing lease covering property owned by the estate, or to commit royalties or other interest in minerals, whether subject to lease or not, to a pooling or unitization agreement. The application must also describe the property sufficiently as required in the original application to lease, describe briefly the lease to which the interest of the estate is subject, and set out the reasons the proposed agreement concerning the property should be made. A true copy of the proposed agreement shall be attached to the application and by reference made a part of the application, but the agreement may not be recorded in the minutes. The clerk shall immediately, after the application is filed, call it to the attention of the judge.

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

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

(f) If the court finds that the pool or unit to which the agreement relates will be operated in such a manner as to protect correlative rights or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other mineral subject to the pool or unit, that it is in the best interests of the estate that the agreement be executed, and that the agreement conforms substantially with the permissible provisions of Subsection (a) of this section, the court shall enter an order setting out the findings made by the court and authorizing execution of the agreement, with or without payment of cash consideration according to the agreement. If cash consideration is to be paid for the agreement, the court shall make a finding as to the necessity of increased or additional bond as a finding is made in the making of leases on payment of the cash bonus for the lease. The agreement is not valid until the increased or additional bond required by the court, if any, has been approved by the judge and filed with the clerk. If the date is not stipulated in the

agreement, the date of the court's order shall be the effective date of the agreement.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 850. SPECIAL ANCILLARY INSTRUMENTS EXECUTED WITHOUT COURT ORDER. As to any valid mineral lease or pooling or unitization agreement, executed on behalf of the estate before September 1, 1993, pursuant to provisions, or by a former owner of land, minerals, or royalty affected by the lease, pooling, or unitization agreement, the guardian of the estate that is being administered, without further order of the court and without consideration, may execute division orders, transfer orders, instruments of correction, instruments designating depository banks for the reception of delay rentals or shut-in gas well royalty to accrue or become payable under the terms of the lease, or similar instruments pertaining to the lease or agreement and the property covered by the lease or agreement.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 851. PROCEDURE WHEN GUARDIAN OF ESTATE NEGLECTS TO APPLY FOR AUTHORITY. When the guardian of an estate neglects to apply for authority to subject property of the estate to a lease for mineral development, pooling, or unitization, or authority to commit royalty or other interest in minerals to pooling or unitization, any person interested in the estate, on written application filed with the county clerk, may cause the guardian to be cited to show cause why it is not in the best interests of the estate for the lease to be made or an agreement to be entered into. The clerk shall immediately call the filing of the application under this section to the attention of the judge of the court in which the guardianship proceeding is pending. The judge shall set a time and place for a hearing on the application. The guardian of the estate shall be cited to appear and show cause why the execution of the lease or agreement should not be ordered. On hearing and if satisfied from the proof that it would be in the best interests of the estate, the court shall enter an order requiring the guardian to file the guardian's application to subject the property of the estate to a lease for mineral development, with or without pooling or unitization provisions, or to commit royalty or other minerals to unitization, as the case may be. The procedures prescribed with respect to original application to lease or with respect to original application for authority to commit royalty or minerals to pooling or unitization shall be followed.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 852. VALIDATION OF CERTAIN LEASES AND POOLING OR UNITIZATION AGREEMENTS BASED ON PREVIOUS STATUTES. All leases on the oil, gas, or other minerals existing on September 1, 1993, belonging to the estates of minors or other incapacitated persons and all agreements with respect to the pooling or unitization of oil, gas, or other minerals or any interest in oil, gas, or other minerals with like properties of others that have been authorized by the court having venue, executed, and delivered by a guardian or other fiduciary of the estate of a minor or incapacitated person in substantial conformity to the rules set forth in statutes on execution or delivery providing for only seven days' notice in some instances and for a brief order designating a time and place for hearing, are validated insofar as the period of notice or absence of an order setting a time and place for hearing is concerned, unless the length of time of the notice or the absence of the order is an issue in a lease or pooling or unitization agreement that is involved in a lawsuit pending on September 1, 1993.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

SUBPART K. PARTITION OF WARD'S ESTATE IN REALTY

Sec. 853. PARTITION OF WARD'S INTEREST IN REALTY. (a) If a ward owns an interest in real estate in common with another part owner or one or more part owners, and if, in the opinion of the guardian of the estate, it is in the best interests of the ward's estate to partition the real estate, the guardian may agree on a partition with the other part owners subject to the approval of the court in which the guardianship proceeding is pending.

(b) When a guardian has reached an agreement with the other part owners on how to partition the real estate, the guardian shall file with the court an application to have the agreement approved. The application filed by the guardian under this subsection shall describe the land that is to be divided and shall state why it is in the best interests of the ward's estate to partition the real estate and shall show that the proposed partition agreement is fair and

just to the ward's estate.

(c) When the application required by Subsection (b) of this section is filed, the county clerk shall immediately call the filing of the application to the attention of the judge of the court in which the guardianship proceeding is pending. The judge shall designate a day to hear the application. The application must remain on file at least 10 days before any orders are made, and the judge may continue the hearing from time to time until the judge is satisfied concerning the application.

(d) If the judge is satisfied that the proposed partition of the real estate is in the best interests of the ward's estate, the court shall enter an order approving the partition and directing the guardian to execute the necessary agreement for the purpose of carrying the order and partition into effect.

(e) When a guardian has executed an agreement or will execute an agreement to partition any land in which the ward has an interest without court approval as provided by this section, the guardian shall file with the court in which the guardianship proceedings are pending an application for the approval and ratification of the partition agreement. The application must refer to the agreement in such a manner that the court can fully understand the nature of the partition and the land being divided. The application must state that, in the opinion of the guardian, the agreement is fair and just to the ward's estate and is in the best interests of the estate. When the application is filed, a hearing shall be held on the application as provided by Subsection (c) of this section. If the court is of the opinion that the partition is fairly made and that the partition is in the best interests of the ward's estate, the court shall enter an order ratifying and approving the partition agreement. When the partition is ratified and approved, the partition shall be effective and binding as if originally executed after a court order.

(f) If the guardian of the estate of a ward is of the opinion that it is in the best interests of the ward's estate that any real estate that the ward owns in common with others should be partitioned, the guardian may bring a suit in the court in which the guardianship proceeding is pending against the other part owner or part owners for the partition of the real estate. The court, if after hearing the suit is satisfied that the necessity for the partition of the real estate exists, may enter an order partitioning the real estate to the owner of the real estate.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

SUBPART L. INVESTMENTS AND LOANS OF ESTATES OF WARDS

Sec. 854. GUARDIAN REQUIRED TO KEEP ESTATE INVESTED UNDER CERTAIN CIRCUMSTANCES. (a) The guardian of the estate is not required to invest funds that are immediately necessary for the education, support, and maintenance of the ward or others the ward supports, if any, as provided by this chapter. The guardian of the estate shall invest any other funds and assets available for investment unless the court orders otherwise under this subpart.

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

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

Added by Acts 2003, 78th Leg., ch. 549, Sec. 22, eff. Sept. 1, 2003.

Sec. 855. STANDARD FOR MANAGEMENT AND INVESTMENTS. (a) In acquiring, investing, reinvesting, exchanging, retaining, selling, supervising, and managing a ward's estate, a guardian of the estate shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, considering the probable income from as well as the probable increase in value and the safety of their capital. The guardian shall also consider all other relevant factors, including:

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

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

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

- (1) bonds or other obligations of the United States;
- (2) tax-supported bonds of this state;
- (3) except as limited by Subsections (c) and (d) of this section, tax-supported bonds of a county, district, political subdivision, or incorporated city or town in this state;
- (4) shares or share accounts of a state savings and loan association or savings bank with its main office or a branch office in this state if the payment of the shares or share accounts is insured by the Federal Deposit Insurance Corporation;
- (5) the shares or share accounts of a federal savings and loan association or savings bank with its main office or a branch office in this state if the payment of the shares or share accounts is insured by the Federal Deposit Insurance Corporation;
- (6) collateral bonds of companies incorporated under the laws of this state, having a paid-in capital of \$1,000,000 or more, when the bonds are a direct obligation of the company that issues the bonds and are specifically secured by first mortgage real estate notes or other securities pledged with a trustee; or
- (7) interest-bearing time deposits that may be withdrawn on or before one year after demand in a bank that does business in this state where the payment of the time deposits is insured by the Federal Deposit Insurance Corporation.

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

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

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

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

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

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 6.007, eff. Sept. 1, 1999.

Section heading amended by Acts 2003, 78th Leg., ch. 549, Sec. 23, eff. Sept. 1, 2003; Subsecs. (a), (b) amended by Acts 2003, 78th Leg., ch. 549, Sec. 24, eff. Sept. 1, 2003; Subsecs. (a-1), (g) added by Acts 2003, 78th Leg., ch. 549, Sec. 24, eff. Sept. 1, 2003.

Sec. 855A. RETENTION OF ASSETS. (a) A guardian of the estate may retain without court approval until the first anniversary of the date of receipt any property received into the guardianship estate at its inception or added to the estate by gift, devise, inheritance, mutation, or increase, without regard to diversification of investments and without liability for any depreciation or loss resulting from the retention. The guardian shall care for and manage the retained assets as a person of ordinary prudence, discretion, and intelligence would in caring for

and managing the person's own affairs.

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

Added by Acts 2003, 78th Leg., ch. 549, Sec. 25, eff. Sept. 1, 2003.

Sec. 855B. PROCEDURE FOR MAKING INVESTMENTS OR RETAINING ESTATE ASSETS. (a) Not later than the 180th day after the date on which the guardian of the estate qualified as guardian or another date specified by the court, the guardian shall file a written application with the court for an order:

(1) authorizing the guardian to:

(A) develop and implement an investment plan for estate assets;

(B) invest in or sell securities under an investment plan developed under Paragraph (A) of this subdivision;

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

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

(2) modifying or eliminating the guardian's duty to invest the estate.

(b) On hearing the application under this section and on a finding by the preponderance of the evidence that the action requested in the application is in the best interests of the ward and the ward's estate, the court shall render an order granting the authority requested in the application or an order modifying or eliminating the guardian's duty to keep the estate invested. The order must state in reasonably specific terms:

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

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

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

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

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

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

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

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

Added by Acts 2003, 78th Leg., ch. 549, Sec. 25, eff. Sept. 1, 2003.

Amended by Acts 2005, 79th Leg., ch. 200, Sec. 9, eff. Sept. 1, 2005.

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

necessary under this subsection unless ordered by the court.

(b), (c) Repealed by Acts 2003, 78th Leg., ch. 549, Sec. 35. Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 434, Sec. 1, eff. Sept. 1, 1997; Subsec. (a) amended by Acts 2003, 78th Leg., ch. 1103, Sec. 16, eff. Jan. 1, 2004; Subsecs. (b), (c) repealed by Acts 2003, 78th Leg., ch. 549, Sec. 35, eff. Sept. 1, 2003.

Sec. 857. INVESTMENT IN, OR CONTINUED INVESTMENT IN, LIFE INSURANCE OR ANNUITIES. (a) In this section, "life insurance company" means a stock or mutual legal reserve life insurance company that maintains the full legal reserves required under the laws of this state and that is licensed by the State Board of Insurance to transact the business of life insurance in this state.

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

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

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

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

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

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

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

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

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

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

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

(h) If a life, term, or endowment insurance policy or a contract of annuity is owned by the ward when a proceeding for the appointment of a guardian is begun, and it is made to appear that the company issuing the policy or contract of annuity is a life insurance company as defined by this section or the policy or contract is administered by the Veterans Administration, the policy or contract may be continued in full force and effect. All future premiums may be paid out of surplus funds of the ward's estate. The guardian shall apply to the court for an order to continue the policy or contract, or both, according to the existing terms of the policy or contract or to modify the policy or contract to fit any new developments affecting the welfare of the ward. Before any application filed under this subsection is granted, the guardian shall file a report in the court that shows in detail the financial condition of the ward's estate at the time the application is filed.

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

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

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 549, Sec. 26, eff. Sept. 1, 2003.

Sec. 858. LOANS AND SECURITY FOR LOANS. (a) If, at any time, the guardian of the estate has on hand money belonging to the ward in an amount that provides a return that is more than is necessary for the education, support, and maintenance of the ward and others the ward supports, if applicable, the guardian may lend the money for a reasonable rate of interest. The guardian shall take the note of the borrower for the money that is loaned, secured by a mortgage with a power of sale on unencumbered real estate located in this state worth at least twice the amount of the note, or by collateral notes secured by vendor's lien notes, as collateral, or the guardian may purchase vendor's lien notes if at least one-half has been paid in cash or its equivalent on the land for which the notes were given.

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

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

(d) Except as provided by Subsection (e) of this section, a guardian of the estate who lends estate money may not pay or transfer any money to consummate the loan until the guardian:

(1) submits to an attorney for examination all bonds, notes, mortgages, abstracts, and other documents relating to the loan; and

(2) receives a written opinion from the attorney stating that the documents under Subdivision (1) of this subsection are regular and that the title to relevant bonds, notes, or real estate is clear.

(e) A guardian of the estate may obtain a mortgagee's title insurance policy on any real estate loan in lieu of an abstract and attorney's opinion under Subsection (d) of this section.

(f) The borrower shall pay attorney's fees for any legal services required by this section.

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

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

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 549, Sec. 27, eff. Sept. 1, 2003.

Sec. 860. GUARDIAN'S INVESTMENTS IN REAL ESTATE. (a) The guardian of the estate may invest estate assets in real estate if:

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

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

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

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

(3) the guardian files a written application with the court requesting a court order authorizing the guardian to make the desired investment and stating the reasons why the guardian is of the opinion that the investment would be for the benefit of the ward; and

(4) the court renders an order authorizing the investment as

provided by this section.

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

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

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

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Subsec. (a) amended by Acts 2003, 78th Leg., ch. 549, Sec. 28, eff. Sept. 1, 2003.

Sec. 861. OPINION OF ATTORNEY WITH RESPECT TO LOANS. When the guardian of the estate of a ward lends the money of the ward, the guardian may not pay over or transfer any money in consummation of the loan until the guardian has submitted to a reputable attorney for examination all bonds, notes, mortgages, documents, abstracts, and other papers pertaining to the loan and the guardian has received a written opinion from the attorney that all papers pertaining to the loan are regular and that the title to the bonds, notes, or real estate is good. The attorney's fee shall be paid by the borrower. The guardian may obtain a mortgagee's title insurance policy on any real estate loan instead of an abstract and attorney's opinion.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 55, eff. Sept. 1, 1995.

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

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 56, eff. Sept. 1, 1995.

Sec. 863. LIABILITY OF GUARDIAN AND GUARDIAN'S SURETY. (a) In addition to any other remedy authorized by law, if the guardian of the estate fails to invest or lend estate assets in the manner provided by this subpart, the guardian and the guardian's surety are liable for the principal and the greater of:

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

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

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

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 549, Sec. 29, eff. Sept. 1, 2003.

SUBPART M. TAX MOTIVATED AND CHARITABLE GIFTS

Sec. 865. POWER TO MAKE TAX-MOTIVATED GIFTS. (a) On application of the guardian of the estate or any interested party and after the posting of notice, the court, after hearing, may enter an order that authorizes the guardian to apply the principal or income of the ward's estate that is not required for the support of

the ward or the ward's family during the ward's lifetime toward the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the ward's estate on a showing that the ward will probably remain incapacitated during the ward's lifetime. On the ward's behalf, the court may authorize the guardian to make gifts, outright or in trust, of the ward's personal property or real estate to or for the benefit of:

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

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

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

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

(b) The person making an application to the court under this section shall outline the proposed estate plan and set forth all the benefits that are to be derived from the estate plan. The application must indicate that the planned disposition is consistent with the ward's intentions if the ward's intentions can be ascertained. If the ward's intentions cannot be ascertained, the ward will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of the ward's estate as provided by this section.

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

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

(e) A person who makes an application to the court under this section shall mail notice of the application by 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.

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

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 77, Sec. 9, eff. Sept. 1, 1997; Subsec. (f) added by Acts 2005, 79th Leg., ch. 256, Sec. 1, eff. Sept. 1, 2005.

Sec. 865A. INSPECTION OF CERTAIN INSTRUMENT FOR ESTATE PLANNING PURPOSES. (a) On the filing of an application under Section 865 of this code, the guardian of the ward's estate may apply to the court for an order to seek an in camera inspection of a true copy of a will, codicil, trust, or other estate planning instrument of the ward as a means of obtaining access to the instrument for purposes of establishing an estate plan under Section 865 of this code.

(b) An application filed under this section must:

(1) be sworn to by the guardian;

(2) list all of the instruments requested for inspection; and

(3) state one or more reasons supporting the necessity to inspect each requested instrument for the purpose described by Subsection (a) of this section.

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

(1) each person who has custody of an instrument listed in

the application;

- (2) the ward's spouse;
- (3) the ward's dependents;
- (4) all devisees under a will, trust, or other beneficial instrument relating to the ward's estate; and

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

(d) Notice required by Subsection (c) of this section must be delivered by certified mail to a person described by Subsection (c)(2), (3), (4), or (5) of this section and by registered or certified mail to a person described by Subsection (c)(1) of this section. After the 10th day after the date on which the applicant complies with the notice requirement, the applicant may request that a hearing be held on the application. Notice of the date, time, and place of the hearing must be given by the applicant to each person described by Subsection (c)(1) of this section when the court sets a date for a hearing on the application.

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

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

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

Added by Acts 2001, 77th Leg., ch. 217, Sec. 16, eff. Sept. 1, 2001.

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

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

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

(b) When an application is filed under this section, the county clerk shall immediately call the filing of the application to the attention of the judge of the court. The judge, by written order filed with the clerk, shall designate a day to hear the application. The application shall remain on file at least 10 days before the hearing is held. The judge may postpone or continue the hearing from time to time until the judge is satisfied concerning the application.

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

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

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

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

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

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

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

SUBPART N. MANAGEMENT TRUSTS

Sec. 867. CREATION OF MANAGEMENT TRUST. (a) In this section, "financial institution" means a financial institution, as defined by Section 201.101, Finance Code, that has trust powers and exists and does business under the laws of this or another state or the United States.

(a-1) The following persons may apply for the creation of a trust under this section:

- (1) the guardian of the estate of a ward;
- (2) the guardian of the person of a ward;
- (3) the guardian of both the person of and estate of a ward;
- (4) an attorney ad litem or guardian ad litem appointed to represent a ward or the ward's interests;
- (5) a person interested in the welfare of an alleged incapacitated person who does not have a guardian of the estate; or
- (6) an attorney ad litem or guardian ad litem appointed to represent an alleged incapacitated person who does not have a guardian or that person's interests.

(b) On application by an appropriate person as provided by Subsection (a-1) of this section, the court with jurisdiction over the guardianship may enter an order that creates for the ward's benefit a trust for the management of guardianship funds if the court finds that the creation of the trust is in the ward's best interests.

(b-1) On application by an appropriate person as provided by Subsection (a-1) of this section and regardless of whether an application for guardianship has been filed on the alleged incapacitated person's behalf, a proper court may enter an order that creates a trust for the management of the estate of an alleged incapacitated person who does not have a guardian if the court, after a hearing, finds that:

- (1) the person is an incapacitated person; and
- (2) the creation of the trust is in the incapacitated person's best interests.

(b-2) If a proceeding for the appointment of a guardian for an alleged incapacitated person is pending, an application for the creation of a trust for the alleged incapacitated person under Subsection (b-1) of this section must be filed in the same court in which the guardianship proceeding is pending.

(b-3) The court shall conduct a hearing to determine incapacity under Subsection (b-1) of this section using the same procedures and evidentiary standards as required in a hearing for the appointment of a guardian for a proposed ward.

(b-4) If, after a hearing, the court finds that a person for whom an application is filed under Subsection (b-1) of this section is an incapacitated person but that it is not in the incapacitated person's best interests to have the court create a management trust for the person's estate, the court may appoint a guardian of the person or estate, or both, for the incapacitated person without the necessity of instituting a separate proceeding for that purpose.

(b-5) Except as provided by Subsections (c) and (d) of this section, the court shall appoint a financial institution to serve as trustee of a trust created under this section.

(c) If the value of the trust's principal is \$50,000 or less, the court may appoint a person other than a financial institution to serve as trustee of the trust only if the court finds the appointment to be in the ward's or incapacitated person's best interests.

(d) If the value of the trust's principal is more than \$50,000, the court may appoint a person other than a financial institution to serve as trustee of the trust only if the court finds that:

- (1) no financial institution is willing to serve as trustee; and
- (2) the appointment is in the ward's or incapacitated person's best interests.

(e) Before making a finding that there is no financial institution willing to serve as trustee under Subsection (d)(1) of this section, the court must check any list of corporate fiduciaries located in this state that is maintained at the office of the presiding judge of the statutory probate courts or at the principal office of the Texas Bankers Association.

(f) If a trust is created for a ward, the order shall direct a person holding property belonging to the ward or to which the ward is entitled to deliver all or part of the property to a person or

corporate fiduciary appointed by the court as trustee of the trust. If a trust is created for an incapacitated person who does not have a guardian, the order shall direct a person holding property belonging to the incapacitated person or to which the incapacitated person is entitled to deliver all or part of the property to the corporate fiduciary or other person appointed as trustee of the trust. The order shall include terms, conditions, and limitations placed on the trust. The court shall maintain the trust under the same cause number as the guardianship proceeding, if applicable.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 57, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1375, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 994, Sec. 1, eff. Sept. 1, 2001.

Subsecs. (a-1) and (b-1) to (b-5) added by Acts 2005, 79th Leg., ch. 1238, Sec. 1, eff. Sept. 1, 2005; Subsecs. (b), (c), (d), and (f) amended by Acts 2005, 79th Leg., ch. 1238, Sec. 1, eff. Sept. 1, 2005.

Sec. 867A. VENUE. If a proceeding for the appointment of a guardian for the alleged incapacitated person is not pending on the date the application is filed, venue for a proceeding to create a trust for an alleged incapacitated person under Section 867(b-1) of this code must be determined in the same manner as venue for a proceeding for the appointment of a guardian is determined under Section 610 of this code.

Added by Acts 2005, 79th Leg., ch. 1238, Sec. 2, eff. Sept. 1, 2005.

Sec. 868. TERMS OF MANAGEMENT TRUST. (a) Except as provided by Subsection (d) of this section, a trust created under Section 867 of this code must provide that:

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

(2) the trustee may disburse an amount of the trust's principal or income as the trustee determines is necessary to expend for the health, education, support, or maintenance of the ward or incapacitated person;

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

(4) if the trustee is a corporate fiduciary, the trustee serves without giving a bond; and

(5) the trustee, on annual application to the court and subject to the court's approval, is entitled to receive reasonable compensation for services that the trustee provided to the ward or incapacitated person as the ward's or incapacitated person's trustee that is:

(A) to be paid from the trust's income, principal, or both; and

(B) determined in the same manner as compensation of a guardian of an estate under Section 665 of this code.

(b) The trust may provide that a trustee make a distribution, payment, use, or application of trust funds for the health, education, support, or maintenance of the ward or incapacitated person or of another person whom the ward or incapacitated person is legally obligated to support, as necessary and without the intervention of a guardian or other representative of the ward or of a representative of the incapacitated person, to:

(1) the ward's guardian;

(2) a person who has physical custody of the ward or incapacitated person or another person whom the ward or incapacitated person is legally obligated to support; or

(3) a person providing a good or service to the ward or incapacitated person or another person whom the ward or incapacitated person is legally obligated to support.

(c) A provision in a trust created under Section 867 that relieves a trustee from a duty, responsibility, or liability imposed by this subpart or Subtitle B, Title 9, Property Code, is enforceable only if:

(1) the provision is limited to specific facts and circumstances unique to the property of that trust and is not applicable generally to the trust; and

(2) the court creating or modifying the trust makes a specific finding that there is clear and convincing evidence that the inclusion of the provision is in the best interests of the beneficiary of the trust.

(d) When creating or modifying a trust, the court may omit or modify terms required by Subsection (a)(1) or (2) of this section

only if the court determines that the omission or modification:

(1) is necessary and appropriate for the ward or incapacitated person to be eligible to receive public benefits or assistance under a state or federal program that is not otherwise available to the ward or incapacitated person; and

(2) is in the ward's or incapacitated person's best interests.

(e) The court may include additional provisions in a trust created or modified under this section if the court determines an addition does not conflict with Subsection (a) and, if appropriate, Subsection (d) of this section.

(f) If the trustee determines that it is in the best interest of the ward or incapacitated person, the trustee may invest funds of the trust in the Texas tomorrow fund established by Subchapter F, Chapter 54, Education Code.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 58, 59, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1375, Sec. 2, 6, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 94, Sec. 2, eff. May 17, 1999; Acts 2001, 77th Leg., ch. 994, Sec. 2, eff. Sept. 1, 2001.

Subsec. (c) added by Acts 2003, 78th Leg., ch. 1154, Sec. 4, eff. Sept. 1, 2003; Subsecs. (a), (b), (d), and (f) amended by Acts 2005, 79th Leg., ch. 1238, Sec. 3, eff. Sept. 1, 2005.

Sec. 868A. DISCHARGE OF GUARDIAN OF ESTATE AND CONTINUATION OF TRUST. On or at any time after the creation of a trust under this subpart, the court may discharge the guardian of the ward's estate if the court determines that the discharge is in the ward's best interests.

Added by Acts 1997, 75th Leg., ch. 1375, Sec. 3, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 549, Sec. 30, eff. Sept. 1, 2003.

Sec. 868B. BOND REQUIREMENT FOR CERTAIN TRUSTEES. The court shall require a person, other than a corporate fiduciary, serving as trustee to file with the county clerk a bond in an amount equal to the value of the trust's principal and projected annual income and with the conditions the court determines are necessary.

Added by Acts 2001, 77th Leg., ch. 994, Sec. 3, eff. Sept. 1, 2001.

Sec. 869. TRUST AMENDMENT, MODIFICATION, OR REVOCATION. (a) The court may amend, modify, or revoke the trust at any time before the date of the trust's termination.

(b) The ward or guardian of the ward's estate or the incapacitated person, as applicable, may not revoke the trust.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Subsec. (b) amended by Acts 2005, 79th Leg., ch. 1238, Sec. 4, eff. Sept. 1, 2005.

Sec. 869A. SUCCESSOR TRUSTEE. The court may appoint a successor trustee if the trustee resigns, becomes ineligible, or is removed.

Added by Acts 1995, 74th Leg., ch. 1039, Sec. 60, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 994, Sec. 4, eff. Sept. 1, 2001.

Sec. 869B. APPLICABILITY OF TEXAS TRUST CODE. (a) A trust created under Section 867 of this code is subject to Subtitle B, Title 9, Property Code.

(b) To the extent of a conflict between Subtitle B, Title 9, Property Code, and a provision of this subpart or of the trust, the provision of the subpart or trust controls.

Added by Acts 1997, 75th Leg., ch. 1375, Sec. 3, eff. Sept. 1, 1997.

Sec. 869C. JURISDICTION OVER TRUST MATTERS. A court that creates a trust under Section 867 of this code has the same jurisdiction to hear matters relating to the trust as the court has with respect to guardianship and other matters covered by this chapter.

Added by Acts 1997, 75th Leg., ch. 1375, Sec. 3, eff. Sept. 1, 1997. Amended by Acts 2005, 79th Leg., ch. 1238, Sec. 5, eff. Sept. 1, 2005.

Sec. 870. TERMINATION OF TRUST. (a) If the ward or incapacitated person is a minor, the trust terminates:

(1) on the death of the ward or incapacitated person or the ward's or incapacitated person's 18th birthday, whichever is earlier; or

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

(b) If the ward or incapacitated person is not a minor, the trust terminates on the date the court determines that continuing

the trust is no longer in the ward's or incapacitated person's best interests or on the death of the ward or incapacitated person.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 61, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1375, Sec. 4, eff. Sept. 1, 1997; Acts 2005, 79th Leg., ch. 1238, Sec. 6, eff. Sept. 1, 2005.

Sec. 871. ANNUAL ACCOUNTING. (a) The trustee shall prepare and file with the court an annual accounting of transactions in the trust in the same manner and form that is required of a guardian under this chapter.

(b) If a trust has been created under this section for a ward, the trustee shall provide a copy of the annual account to the guardian of the ward's estate or person.

(c) The annual account is subject to court review and approval in the same manner that is required of an annual account prepared by a guardian under this chapter.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Subsec. (b) amended by Acts 2005, 79th Leg., ch. 1238, Sec. 7, eff. Sept. 1, 2005.

Sec. 872. LIABILITY. The guardian of the person or of the estate of the ward or the surety on the bond of the guardian is not liable for an act or omission of the trustee.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 62, eff. Sept. 1, 1995.

Sec. 873. DISTRIBUTION OF TRUST PROPERTY. Unless otherwise provided by the court, the trustee shall:

(1) prepare a final account in the same form and manner that is required of a guardian under Section 749 of this code; and

(2) on court approval, distribute the principal or any undistributed income of the trust:

(A) to the ward or incapacitated person when the trust terminates on its own terms;

(B) to the successor trustee on appointment of a successor trustee; or

(C) to the representative of the deceased ward's or incapacitated person's estate on the ward's or incapacitated person's death.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 63, eff. Sept. 1, 1995.

Amended by Acts 2005, 79th Leg., ch. 1238, Sec. 8, eff. Sept. 1, 2005.

PART 5. SPECIAL PROCEEDINGS AND ORDERS

SUBPART A. TEMPORARY GUARDIANSHIPS

Sec. 874. PRESUMPTION OF INCAPACITATION. The person for whom a temporary guardian is appointed under Section 875 of this code may not be presumed to be incapacitated.

Added by Acts 2005, 79th Leg., ch. 200, Sec. 10, eff. Sept. 1, 2005.

Sec. 875. TEMPORARY GUARDIAN--PROCEDURE. (a) If a court is presented with substantial evidence that a person may be a minor or other incapacitated person, and the court has probable cause to believe that the person or person's estate, or both, requires the immediate appointment of a guardian, the court shall appoint a temporary guardian with limited powers as the circumstances of the case require.

(b) The person retains all rights and powers that are not specifically granted to the person's temporary guardian by court order.

(c) A sworn, written application for the appointment of a temporary guardian shall be filed before the court appoints a temporary guardian. The application must state:

(1) the name and address of the person who is the subject of the guardianship proceeding;

(2) the danger to the person or property alleged to be imminent;

(3) the type of appointment and the particular protection and assistance being requested;

(4) the facts and reasons supporting the allegations and requests;

(5) the name, address, and qualification of the proposed temporary guardian;

(6) the name, address, and interest of the applicant; and

(7) if applicable, that the proposed temporary guardian is a private professional guardian who is certified under Subchapter C,

Chapter 111, Government Code, and has complied with the requirements of Section 697 of this code.

(d) On the filing of an application for temporary guardianship, the court shall appoint an attorney to represent the proposed ward in all guardianship proceedings in which independent counsel has not been retained by or on behalf of the proposed ward.

(e) On the filing of an application for temporary guardianship, the clerk shall issue notice that shall be served on the respondent, the respondent's appointed attorney, and the proposed temporary guardian named in the application, if that person is not the applicant. The notice must describe the rights of the parties and the date, time, place, purpose, and possible consequences of a hearing on the application. A copy of the application must be attached to the notice.

(f)(1) A hearing shall be held not later than the 10th day after the date of the filing of the application for temporary guardianship unless the hearing date is postponed as provided by Subdivision (2) of this subsection. At a hearing under this section, the respondent has the right to:

- (A) receive prior notice;
- (B) have representation by counsel;
- (C) be present;
- (D) present evidence and confront and cross-examine witnesses; and

- (E) a closed hearing if requested by the respondent or the respondent's attorney.

(2) The respondent or the respondent's attorney may consent to postpone the hearing on the application for temporary guardianship for a period not to exceed 30 days after the date of the filing of the application.

(3) Every application for temporary guardianship takes precedence over all matters except older matters of the same character.

(4) Immediately after an application for temporary guardianship is filed, the court shall issue an order that sets a certain date for hearing on the application for temporary guardianship.

(5) On one day's notice to the party who filed the application for temporary guardianship, the respondent or the respondent's attorney may appear and move for the dismissal of the application for temporary guardianship. If a motion is made for dismissal of the application for temporary guardianship, the court shall hear and determine the motion as expeditiously as the ends of justice require.

(6) If the applicant is not the proposed temporary guardian, a temporary guardianship may not be granted before a hearing on the application required by Subdivision (1) of this subsection unless the proposed temporary guardian appears in court.

(g) If at the conclusion of the hearing required by Subsection (f)(1) of this section the court determines that the applicant has established that there is substantial evidence that the person is a minor or other incapacitated person, that there is imminent danger that the physical health or safety of the respondent will be seriously impaired, or that the respondent's estate will be seriously damaged or dissipated unless immediate action is taken, the court shall appoint a temporary guardian by written order. The court shall assign to the temporary guardian only those powers and duties that are necessary to protect the respondent against the imminent danger shown. The court shall set bond according to Subpart B, Part 3, of this chapter. The reasons for the temporary guardianship and the powers and duties of the temporary guardian must be described in the order of appointment.

(h) Except as provided by Subsection (k) of this section, a temporary guardianship may not remain in effect for more than 60 days.

(i) If the court appoints a temporary guardian after the hearing required by Subsection (f)(1) of this section, all court costs, including attorney's fees, may be assessed as provided in Section 665A, 665B, or 669 of this code.

(j) The court may not customarily or ordinarily appoint the Department of Aging and Disability Services as a temporary guardian under this section. The appointment of the department as a temporary guardian under this section should be made only as a last resort.

(k) If an application for a temporary guardianship, for the

conversion of a temporary guardianship to a permanent guardianship, or for a permanent guardianship is challenged or contested, the court, on the court's own motion or on the motion of any interested party, may appoint a new temporary guardian or grant a temporary restraining order under Rule 680, Texas Rules of Civil Procedure, or both, without issuing additional citation if the court finds that the appointment or the issuance of the order is necessary to protect the proposed ward or the proposed ward's estate.

(1) A temporary guardian appointed under Subsection (k) of this section must qualify in the same form and manner required of a guardian under this code. The term of the temporary guardian expires at the conclusion of the hearing challenging or contesting the application or on the date a permanent guardian the court appoints for the proposed ward qualifies to serve as the ward's guardian.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.074, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1039, Sec. 64, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 997, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 217, Sec. 17, eff. Sept. 1, 2001.

Subsecs. (b) to (g), (k) amended by Acts 2003, 78th Leg., ch. 277, Sec. 1, eff. Sept. 1, 2003; Subsec. (l) added by Acts 2003, 78th Leg., ch. 277, Sec. 1, eff. Sept. 1, 2003; Subsecs. (c), (j) amended by Acts 2005, 79th Leg., ch. 268, Sec. 3.18, eff. Sept. 1, 2005.

Sec. 876. AUTHORITY OF TEMPORARY GUARDIAN. When the temporary guardian files the oath and bond required under this chapter, the court order appointing the temporary guardian takes effect without the necessity for issuance of letters of guardianship. The clerk shall note compliance with oath and bond requirements by the appointed guardian on a certificate attached to the order. The order shall be evidence of the temporary guardian's authority to act within the scope of the powers and duties set forth in the order. The clerk may not issue certified copies of the order until the oath and bond requirements are satisfied.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 877. POWERS OF TEMPORARY GUARDIAN. All the provisions of this chapter relating to the guardianship of persons and estates of incapacitated persons apply to a temporary guardianship of the persons and estates of incapacitated persons, insofar as the same may be made applicable.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 878. ACCOUNTING. At the expiration of a temporary appointment, the appointee shall file with the clerk of the court a sworn list of all property of the estate that has come into the hands of the appointee, a return of all sales made by the appointee, and a full exhibit and account of all of the appointee's acts as temporary appointee.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

Sec. 879. CLOSING TEMPORARY GUARDIANSHIP. The court shall act on the list, return, exhibit, and account filed under Section 878 of this code. Whenever temporary letters expire or cease to be effective for any reason, the court shall immediately enter an order requiring the temporary appointee to deliver the estate remaining in the temporary appointee's possession to the person who is legally entitled to the possession of the estate. The temporary appointee shall be discharged and the sureties on the bond of the temporary appointee shall be released as to future liability on proof that the appointee delivered the property as required by this section.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

SUBPART B. GUARDIANSHIPS FOR NONRESIDENTS

Sec. 881. NONRESIDENT GUARDIAN. (a) A nonresident of this state may be appointed and qualified as guardian or coguardian of a nonresident ward's estate located in this state in the same manner provided by this code for the appointment and qualification of a resident as guardian of the estate of an incapacitated person if:

(1) a court of competent jurisdiction in the geographical jurisdiction in which the nonresident resides appointed the nonresident guardian;

(2) the nonresident is qualified as guardian or as a fiduciary legal representative by whatever name known in the foreign jurisdiction of the property or estate of the ward located in the jurisdiction of the foreign court; and

(3) with the written application for appointment in the

county court of any county in this state in which all or part of the ward's estate is located, the nonresident files a complete transcript of the proceedings from the records of the court in which the nonresident applicant was appointed, showing the applicant's appointment and qualification as the guardian or fiduciary legal representative of the ward's property or estate.

(b) The transcript required by Subsection (a) of this section must be certified to and attested by the clerk of the foreign court or the officer of the court charged by law with custody of the court records, under the court seal, if any. The certificate of the judge, chief justice, or presiding magistrate, as applicable, of the foreign court must be attached to the transcript, certifying that the attestation of the transcript by the clerk or legal custodian of the court records is in correct form.

(c) If the nonresident applicant meets the requirements of this section, without the necessity of any notice or citation, the court shall enter an order appointing the nonresident. After the nonresident applicant qualifies in the manner required of resident guardians and files with the court a power of attorney appointing a resident agent to accept service of process in all actions or proceedings with respect to the estate, the clerk shall issue the letters of guardianship to the nonresident guardian.

(d) After qualification, the nonresident guardian shall file an inventory and appraisal of the estate of the ward in this state subject to the jurisdiction of the court, as in ordinary cases, and is subject to all applicable provisions of this code with respect to the handling and settlement of estates by resident guardians.

(e) A resident guardian who has any of the estate of a ward may be ordered by the court to deliver the estate to a duly qualified and acting guardian of the ward.
Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993;
Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 65, eff. Sept. 1, 1995.

Sec. 881A. NONRESIDENT GUARDIAN'S REMOVAL OF WARD'S PROPERTY FROM STATE. A nonresident guardian, regardless of whether the nonresident guardian is qualified under this code, may remove personal property of the ward out of the state if:

(1) the removal does not conflict with the tenure of the property or the terms and limitations of the guardianship under which the property is held; and

(2) all debts known to exist against the estate in this state are paid or secured by bond payable to and approved by the judge of the court in which guardianship proceedings are pending in this state.

Added by Acts 1995, 74th Leg., ch. 1039, Sec. 66, eff. Sept. 1, 1995.

Sec. 882. NONRESIDENT AS WARD. Guardianship of the estate of a nonresident incapacitated person who owns property in this state may be granted, if necessary, in the same manner as for the property of a resident of this state. A court in the county in which the principal estate of the ward is located has jurisdiction to appoint a guardian. The court shall take all actions and make all necessary orders with respect to the estate of the ward for the maintenance, support, care, or education of the ward, out of the proceeds of the ward's estate, in the same manner as if the ward were a resident of this state and was sent abroad by the court for education or treatment. If a qualified nonresident guardian of the estate later qualifies in this state under Section 881 of this code, the court shall close the resident guardianship.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

SUBPART C. INCAPACITATED SPOUSE AND COMMUNITY PROPERTY

Sec. 883. INCAPACITATED SPOUSE. (a) Except as provided by Subsection (c) of this section, when a husband or wife is judicially declared to be incapacitated:

(1) the other spouse, in the capacity of surviving partner of the marital partnership, acquires full power to manage, control, and dispose of the entire community estate as community administrator, including the part of the community estate that the incapacitated spouse legally has the power to manage in the absence of the incapacity, without an administration; and

(2) if the incapacitated spouse owns separate property, the court shall appoint the other spouse or another person or entity, in the order of precedence established under Section 677 of this code,

as guardian of the estate to administer only the separate property of the incapacitated spouse.

(b) The spouse who is not incapacitated is presumed to be suitable and qualified to serve as community administrator. The qualification of a guardian of the estate of the separate property of an incapacitated spouse as required under Subsection (a) of this section does not deprive the competent spouse of the right to manage, control, and dispose of the entire community estate as provided in this chapter.

(c) If a spouse who is not incapacitated is removed as community administrator or if the court finds that the spouse who is not incapacitated would be disqualified to serve as guardian under Section 681 of this code or is not suitable to serve as community administrator for any other reason, the court:

(1) shall appoint a guardian of the estate for the incapacitated spouse if the court:

(A) has not appointed a guardian of the estate under Subsection (a)(2) of this section; or

(B) has appointed the spouse who is not incapacitated as guardian of the estate under Subsection (a)(2) of this section;

(2) after taking into consideration the financial circumstances of the spouses and any other relevant factors, may order the spouse who is not incapacitated to deliver to the guardian of the estate of the incapacitated spouse a portion, not to exceed one-half, of the community property that is subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code; and

(3) shall authorize the guardian of the estate of the incapacitated spouse to administer:

(A) any separate property of the incapacitated spouse;

(B) any community property that is subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code;

(C) any community property delivered to the guardian of the estate under Subdivision (2) of this subsection; and

(D) any income earned on property described in this subsection.

(d) On a person's removal as community administrator or on qualification of a guardian of the estate of the person's incapacitated spouse under Subsection (c) of this section, as appropriate, a spouse who is not incapacitated shall continue to administer:

(1) the person's own separate property;

(2) any community property that is subject to the person's sole management, control, and disposition under Section 3.102, Family Code;

(3) any community property subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code, unless the person is required to deliver a portion of that community property to the guardian of the estate of the person's incapacitated spouse under Subsection (c)(2) of this section, in which event, the person shall continue to administer only the portion of the community property remaining after delivery; and

(4) any income earned on property described in this subsection the person is authorized to administer.

(e) The duties and obligations between spouses, including the duty to support the other spouse, and the rights of any creditor of either spouse are not affected by the manner in which community property is administered under this section.

(f) This section does not partition community property between an incapacitated spouse and a spouse who is not incapacitated.

(g) If the court renders an order directing the guardian of the estate of the incapacitated spouse to administer certain community property as provided by Subsection (c) of this section, the community property administered by the guardian is considered the incapacitated spouse's community property, subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code. If the court renders an order directing the spouse who is not incapacitated to administer certain community property as provided by Subsection (d) of this section, the community property administered by the spouse who is not incapacitated is considered that spouse's community property, subject to that spouse's sole management, control, and disposition under Section 3.102, Family Code.

(h) An order described by Subsection (g) of this section does not affect the enforceability of a creditor's claim existing on the date the court renders the order.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 217, Sec. 18, eff. Sept. 1, 2001.

Subsecs. (f) to (h) added by Acts 2003, 78th Leg., ch. 549, Sec. 31, eff. Sept. 1, 2003.

Sec. 883A. RECOVERY OF CAPACITY. The special powers of management, control, and disposition vested in the community administrator by this chapter shall terminate when the decree of a court of competent jurisdiction finds that the mental capacity of the incapacitated spouse has been recovered.

Added by Acts 1995, 74th Leg., ch. 1039, Sec. 67, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 217, Sec. 19, eff. Sept. 1, 2001.

Sec. 883B. ACCOUNTING, INVENTORY, AND APPRAISEMENT BY COMMUNITY ADMINISTRATOR. (a) On its own motion or on the motion of an interested person for good cause shown, the court may order a community administrator to file a verified, full, and detailed inventory and appraisal of:

(1) any community property that is subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code;

(2) any community property subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code; and

(3) any income earned on property described in this subsection.

(b) At any time after the expiration of 15 months after the date that a community administrator's spouse is judicially declared to be incapacitated, the court, on its own motion or on the motion of an interested person for good cause shown, may order the community administrator to prepare and file an accounting of:

(1) any community property that is subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code;

(2) any community property subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code; and

(3) any income earned on property described in this subsection.

(c) An inventory and appraisal ordered under Subsection (a) of this section must:

(1) be prepared in the same form and manner that is required of a guardian under Section 729 of this code; and

(2) be filed not later than the 90th day after the date on which the order is issued.

(d) An accounting ordered under Subsection (b) of this section must:

(1) be prepared in the same form and manner that is required of a guardian under Section 741 of this code, except that the requirement that an accounting be filed annually with the county clerk does not apply; and

(2) be filed not later than the 60th day after the date on which the order is issued.

(e) After an initial accounting has been filed by a community administrator under this section, the court, on the motion of an interested person for good cause shown, may order the community administrator to file subsequent periodic accountings at intervals of not less than 12 months.

Added by Acts 2001, 77th Leg., ch. 217, Sec. 20, eff. Sept. 1, 2001.

Sec. 883C. REMOVAL OF COMMUNITY ADMINISTRATOR. (a) A court, on its own motion or on the motion of an interested person and after the community administrator has been cited by personal service to answer at a time and place specified in the notice, may remove a community administrator if:

(1) the community administrator fails to comply with a court order for an inventory and appraisal, accounting, or subsequent accounting under Section 883B of this code;

(2) sufficient grounds appear to support belief that the community administrator has misapplied or embezzled, or that the community administrator is about to misapply or embezzle, all or any part of the property committed to the care of the community administrator;

(3) the community administrator is proved to have been guilty of gross misconduct or gross mismanagement in the performance of duties as community administrator; or

(4) the community administrator becomes an incapacitated person, is sentenced to the penitentiary, or for any other reason becomes legally incapacitated from properly performing the community administrator's fiduciary duties.

(b) The order of removal must state the cause of removal and shall direct by order the disposition of the assets remaining in the name or under the control of the removed community administrator.

(c) A community administrator who defends an action for the removal of the community administrator in good faith, regardless of whether successful, is entitled to recover from the incapacitated spouse's part of the community estate the community administrator's necessary expenses and disbursements in the removal proceedings, including reasonable attorney's fees.

Added by Acts 2001, 77th Leg., ch. 217, Sec. 20, eff. Sept. 1, 2001.

Sec. 883D. APPOINTMENT OF ATTORNEY AD LITEM FOR INCAPACITATED SPOUSE. (a) The court shall appoint an attorney ad litem to represent the interests of an incapacitated spouse in a proceeding to remove a community administrator or other proceeding brought under this subpart.

(b) The attorney ad litem may demand from the community administrator an accounting or inventory and appraisement of the incapacitated spouse's part of the community estate being managed by the community administrator.

(c) A community administrator shall comply with a demand made under this section not later than the 60th day after the date on which the community administrator receives the demand.

(d) An accounting or inventory and appraisement returned under this section must be prepared in the form and manner required by the attorney ad litem, and the attorney ad litem may require the community administrator to file the accounting and inventory and appraisement with the court.

Added by Acts 2001, 77th Leg., ch. 217, Sec. 20, eff. Sept. 1, 2001.

Sec. 884. DELIVERY TO SPOUSE. A guardian of the estate of an incapacitated married person who, as guardian, is administering community property as part of the estate of the ward, shall deliver on demand the community property to the spouse who is not incapacitated if the spouse becomes community administrator under Section 883 of this code.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2001, 77th Leg., ch. 217, Sec. 21, eff. Sept. 1, 2001.

Sec. 884A. LAWSUIT INFORMATION. A person whose spouse is judicially declared to be incapacitated and who acquires the power to manage, control, and dispose of the entire community estate under Section 883 of this code shall inform the court in writing of any suit filed by or on behalf of the person that:

(1) is a suit for dissolution of the marriage of the person and the person's incapacitated spouse; or

(2) names the incapacitated spouse as a defendant.

Added by Acts 2001, 77th Leg., ch. 217, Sec. 22, eff. Sept. 1, 2001.

SUBPART D. RECEIVERSHIP FOR MINORS AND OTHER INCAPACITATED PERSONS

Sec. 885. RECEIVERSHIP. (a) When the estate of a minor or other incapacitated person or any portion of the estate of the minor or other incapacitated person appears in danger of injury, loss, or waste and in need of a guardianship or other representative and there is no guardian of the estate who is qualified in this state and a guardian is not needed, the county judge of the county in which the minor or other incapacitated person resides or in which the endangered estate is located shall enter an order, with or without application, appointing a suitable person as receiver to take charge of the estate. The court order shall require a receiver appointed under this section to give bond as in ordinary receiverships in an amount the judge deems necessary to protect the estate. The court order shall specify the duties and powers of the receiver as the judge deems necessary for the protection, conservation, and preservation of the estate. The clerk shall enter an order made under this section on the minutes of the court. The person who is appointed as receiver shall make and submit a bond for the judge's approval and shall file the bond, when approved, with the clerk. The person who is appointed receiver shall proceed to take charge of the endangered estate pursuant to the powers and duties vested in the person by the order of appointment and

subsequent orders made by the judge.

(b) During the pendency of the receivership, when the needs of the minor or other incapacitated person require the use of the income or corpus of the estate for the education, clothing, or subsistence of the minor or other incapacitated person, the judge, with or without application, shall enter an order on the minutes of the court that appropriates an amount of income or corpus that is sufficient for that purpose. The receiver shall use the amount appropriated by the court to pay a claim for the education, clothing, or subsistence of the minor or other incapacitated person that is presented to the judge for approval and ordered by the judge to be paid.

(c) During the pendency of the receivership, when the receiver has on hand an amount of money that belongs to the minor or other incapacitated person that is in excess of the amount needed for current necessities and expenses, the receiver, under direction of the judge, may invest, lend, or contribute the excess money or any portion of the money in the manner, for the security, and on the terms and conditions provided by this chapter for investments, loans, or contributions by guardians. The receiver shall report to the judge all transactions made under this subsection in the same manner that a report is required of a guardian under this chapter.

(d) All necessary expenses incurred by the receiver in administering the estate may be rendered monthly to the judge in the form of a sworn statement of account that includes a report of the receiver's acts, the condition of the estate, the status of the threatened danger to the estate, and the progress made toward abatement of the danger. If the judge is satisfied that the statement is correct and reasonable in all respects, the judge shall promptly enter an order approving the expenses and authorizing the receiver to be reimbursed from the funds of the estate in the receiver's hands. A receiver shall be compensated for services rendered in the receiver's official capacity in the same manner and amount as provided by this chapter for similar services rendered by guardians of estates.

(e) When the threatened danger has abated and the estate is no longer liable to injury, loss, or waste because there is no guardian or other representative of the estate, the receiver shall report to the judge, file with the clerk a full and final sworn account of all property of the estate the receiver received, had on hand when the receivership was pending, all sums paid out, all acts performed by the receiver with respect to the estate, and all property of the estate that remains in the receiver's hands on the date of the report. On the filing of the report, the clerk shall issue and cause to be posted a notice to all persons interested in the welfare of the minor or other incapacitated person and shall give personal notice to the person who has custody of the minor or other incapacitated person to appear before the judge at a time and place specified in the notice and contest the report and account if the person desires.

(f) If on hearing the receiver's report and account the judge is satisfied that the danger of injury, loss, or waste to the estate has abated and that the report and account are correct, the judge shall enter an order finding that the danger of injury, loss, or waste to the estate has abated and shall direct the receiver to deliver the estate to the person from whom the receiver took possession as receiver, to the person who has custody of the minor or other incapacitated person, or to another person as the judge may find is entitled to possession of the estate. A person who receives the estate under this subsection shall execute and file with the clerk an appropriate receipt for the estate that is delivered to the person. The judge's order shall discharge the receivership and the sureties on the bond of the receiver. If the judge is not satisfied that the danger has abated, or if the judge is not satisfied with the receiver's report and account, the judge shall enter an order that continues the receivership in effect until the judge is satisfied that the danger has abated or is satisfied with the report and account.

(g) An order or a bond, report, account, or notice in a receivership proceeding must be recorded in the minutes of the court.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993.

SUBPART E. PAYMENT OF CLAIMS WITHOUT GUARDIANSHIP

Sec. 887. PAYMENT OF CLAIMS WITHOUT GUARDIANSHIP AND ADMINISTRATION OF TERMINATED GUARDIANSHIP ASSETS. (a) When a

resident person who is a minor or other incapacitated person, or the former ward of a guardianship terminated under Subpart C, Part 4, of this code, who are referred to in this section as "creditor," are without a legal guardian of the person's estate, and the person is entitled to money in an amount that is \$100,000 or less, the right to which is liquidated and is uncontested in any pending lawsuit, the debtor may pay the money to the county clerk of the county in which the creditor resides to the account of the creditor, giving the creditor's name, the creditor's social security identification number, the nature of the creditor's disability, and, if the creditor is a minor, the minor's age, and the creditor's post-office address. The receipt for the money signed by the clerk is binding on the creditor as of the date of receipt and to the extent of the payment. The clerk, by letter mailed to the address given by the debtor, shall apprise the creditor of the fact that the deposit was made. On receipt of the payment by the clerk, the clerk shall call the receipt of the payment to the court's attention and shall invest the money as authorized under this chapter pursuant to court order in the name and for the account of the minor or other person entitled to the money. Any increase, dividend, or income from an investment made under this section shall be credited to the account of the minor or other person entitled to the investment. Any money that is deposited under the terms of this section that has not been paid out shall be subject to the provisions of this chapter not later than October 1, 1993.

(b) Not later than March 1 of each calendar year, the clerk of the court shall make a written report to the court of the status of an investment made by the clerk under this section. The report must contain:

(1) the amount of the original investment or the amount of the investment at the last annual report, whichever is later;

(2) any increase, dividend, or income from such investment since the last annual report;

(3) the total amount of the investment and all increases, dividends, or income at the date of the report; and

(4) the name of the depository or the type of investment.

(c) The father or mother, or unestranged spouse, of the creditor, with priority being given to the spouse who resides in this state or if there is no spouse and both father and mother are dead or are nonresidents of this state, then the person who resides in this state who has actual custody of the creditor, as custodian and on filing with the clerk written application and bond approved by the county judge of the county, may withdraw the money from the clerk for the use and benefit of the creditor, the bond to be in double the amount of the money and to be payable to the judge or the judge's successors in office and to be conditioned that the custodian will use the money for the creditor's benefit under directions of the court and that the custodian, when legally called on to do so, will faithfully account to the creditor and the creditor's heirs or legal representatives for the money and any increase to the money on the removal of the disability to which the creditor is subject, or on the creditor's death, or the appointment of a guardian for the creditor. A fee or commission may not be allowed to the custodian for taking care of, handling, or expending the money withdrawn by the custodian.

(d) When the custodian has expended the money in accordance with directions of the court or has otherwise complied with the terms of the custodian's bond by accounting for the money and any increase in the money, the custodian shall file with the county clerk of the county the custodian's sworn report of the custodian's accounting. The filing of the custodian's report, when approved by the court, operates as a discharge of the person as custodian and of the person's sureties from all further liability under the bond. The court shall satisfy itself that the report is true and correct and may require proof as in other cases.

(e) When a nonresident minor, a nonresident person who is adjudged by a court of competent jurisdiction to be incapacitated, or the former ward of a guardianship terminated under Subpart C, Part 4, of this code who has no legal guardian qualified in this state is entitled to money in an amount that is not more than \$100,000 owing as a result of transactions within this state, the right to which is liquidated and is uncontested in any pending lawsuit in this state, the debtor in this state may pay the money to the guardian of the creditor who is duly qualified in the domiciliary jurisdiction or to the county clerk of any county in

this state in which real property owned by the nonresident person is located. If the person is not known to own any real property in any county in this state the debtor has the right to pay the money to the county clerk of the county of this state in which the debtor resides. In either case, the debtor's payment to the clerk is for the use and benefit and for the account of the nonresident creditor. The receipt for the payment signed by the clerk that recites the name of the creditor and the post office address of the creditor, if known, is binding on the creditor as of the date and to the extent of the payment. The clerk shall handle the money paid to the clerk by the debtor in the same manner as provided for cases of payments to the accounts of residents of this state under Subsections (a)-(d) of this section. All applicable provisions of Subsections (a)-(d) of this section apply to the handling and disposition of money or any increase, dividend, or income paid to the clerk for the use, benefit, and account of the nonresident creditor.

(f) If a person who is authorized to withdraw the money does not withdraw the money from the clerk as provided for in this section, the creditor, after termination of the creditor's disability, or the subsequent personal representative of the creditor or the creditor's heirs may withdraw, at any time and without special bond for the purpose, the money on simply exhibiting to the clerk an order of the county or probate court of the county where the money is held by the clerk that directs the clerk to deliver the money to the creditor, to the creditor's personal representative, or to the creditor's heirs named in the order. Before the court issues an order under this subsection, the person's identity and the person's credentials must be proved to the court's satisfaction.

(g) When it is made to appear to the judge of a county court, district court, or other court of this state, by an affidavit executed by the superintendent, business manager, or field representative of any eleemosynary institution of this state, that a certain inmate in the institution is a person who has a mental disability, an incapacitated person, or a person whose mental illness or mental incapacity, or both, renders the person incapable of caring for himself and of managing the person's own property and financial affairs, there is no known legal guardian appointed for the estate of the inmate, and there is on deposit in the court registry a certain sum of money that belongs to the inmate that does not exceed \$10,000, the court may order the disposition of the funds as provided by this subsection. The court, on satisfactory proof by affidavit or otherwise that the inmate is a person who has a mental disability, an incapacitated person, or a person whose mental illness or mental incapacity, or both, renders the inmate incapable of caring for the inmate's self and of managing the inmate's own property and financial affairs and is without a legally appointed guardian of the inmate's estate, may by order direct the clerk of the court to pay the money to the institution for the use and benefit of the inmate. The state institution to which the payment is made may not be required to give bond or security for receiving the fund from the court registry, and the receipt from the state institution for the payment, or the canceled check or warrant by which the payment was made, shall be sufficient evidence of the disposition of the payment. The clerk of the court is relieved of further responsibility for the disposition. On receipt of the money, the institution shall deposit all of the amount of money received to the trust account of the inmate. The money deposited by the institution in the trust account is to be used by or for the personal use of the owner of the trust account under the rules or custom of the institution in the expenditure of the funds by the inmate or for the use and benefit of the inmate by the responsible officer of the institution. This subsection is cumulative of all other laws affecting the rights of a person who has a mental disability, an incapacitated person, or a person who has a mental illness and affecting money that belongs to the person as an inmate of a state eleemosynary institution. If the inmate dies leaving a balance in the inmate's trust account, the balance may be applied to the burial expenses of the inmate or applied to the care, support, and treatment account of the inmate at the eleemosynary institution. After the expenditure of all funds in the trust account or after the death of the inmate, the responsible officer shall furnish a statement of expenditures of the funds to the nearest relative who is entitled to receive the statement. A copy of the statement shall be filed with the court that first granted

the order to dispose of the funds in accordance with the provisions of this chapter.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 295, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 127, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1174, Sec. 8, eff. Sept. 1, 2001.

SUBPART F. SALE OF PROPERTY OF MINORS AND CERTAIN WARDS

Sec. 889. SALE OF PROPERTY OF A MINOR BY A PARENT WITHOUT GUARDIANSHIP. (a) When a minor has an interest in real or personal property and the net value of the interest does not exceed \$100,000, a natural or adoptive parent, or the managing conservator, of a minor who is not a ward may apply to the court for an order to sell the minor's interest in the property without being appointed guardian. A minor may not disaffirm a sale of property pursuant to a court order under this section.

(b) The parent shall apply to the court under oath for the sale of the property. Venue for the application under this section is the same as venue for an application for the appointment of a guardian for a minor. The application must contain:

(1) a legal description of the real property and a description that identifies the personal property;

(2) the name of the minor and the minor's interest in the property;

(3) the name of the purchaser;

(4) a statement that the sale of the minor's interest in the property is for cash; and

(5) a statement that all funds received by the parent shall be used for the use and benefit of the minor.

(c) On receipt of the application, the court shall set the application for hearing at a date not earlier than five days from the date of the filing of the application. If the court deems it necessary, the court may cause citation to be issued.

(d) At the time of the hearing of the application filed under this section, the court shall order the sale of the property if the court is satisfied from the evidence that the sale is in the best interests of the minor. The court may require an independent appraisal of the property to be sold to establish the minimum sale price.

(e) When the court enters the order of sale, the purchaser of the property shall pay the proceeds of the sale belonging to the minor into the court registry.

(f) Nothing in this section prevents the proceeds deposited in the registry from being withdrawn from the court registry under Section 887 of this code.

Added by Acts 1993, 73rd Leg., ch. 957, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 68, 69, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 295, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 127, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1174, Sec. 9, eff. Sept. 1, 2001.

Sec. 889A. MORTGAGE OF RESIDENTIAL HOMESTEAD INTEREST OF A MINOR WITHOUT GUARDIANSHIP. (a) In this section:

(1) "Home equity loan" means a loan made under Section 50(a)(6), Article XVI, Texas Constitution.

(2) "Residence homestead" has the meaning assigned by Section 11.13, Tax Code.

(b) When a minor has an interest in a residence homestead and the net value of the interest does not exceed \$100,000, a natural or adoptive parent, subject to Subsection (j) of this section, or the managing conservator, of a minor who is not a ward may apply to the court for an order authorizing the parent or managing conservator to receive, without being appointed guardian, an extension of credit on the minor's behalf that is secured, wholly or partly, by a lien on the homestead. Proceeds of the home equity loan attributable to the minor's interest may be used only to:

(1) make improvements to the homestead;

(2) pay for education or medical expenses of the minor; or

(3) pay the outstanding balance of the loan.

(c) The parent or managing conservator shall apply to the court under oath for the authority to encumber the residence homestead as provided by this section. Venue for the application is the same as venue for an application for the appointment of a guardian for a minor. The application must contain:

(1) the name and address of the minor;

(2) a legal description of the property constituting the homestead;

(3) a description of the minor's ownership interest in the property constituting the homestead;

(4) the name of the minor and the fair market value of the property constituting the homestead;

(5) the amount of the home equity loan;

(6) the purpose or purposes for which the home equity loan is being sought;

(7) a detailed description of the proposed expenditure of the loan proceeds to be received by the parent or managing conservator on the minor's behalf; and

(8) a statement that all loan proceeds received by the parent or managing conservator on the minor's behalf through a home equity loan authorized under this section shall be used in a manner that is for the minor's benefit.

(d) On receipt of the application, the court shall set the application for hearing at a date not earlier than the fifth day after the date the application is filed. If the court considers it necessary, the court may cause citation to be issued.

(e) Before the hearing, the parent or managing conservator shall file with the county clerk a surety bond in an amount at least equal to two times the amount of the proposed home equity loan. The bond must be:

(1) payable to and approved by the court; and

(2) conditioned on the parent or managing conservator:

(A) using the proceeds of the home equity loan attributable to the minor's interest solely for the purposes authorized by this section; and

(B) making payments on the minor's behalf toward the outstanding balance of the home equity loan.

(f) At the time of the hearing of the application filed under this section, the court, on approval of the bond required by Subsection (e) of this section, shall authorize the parent or managing conservator to receive the extension of credit sought in the application if the court is satisfied from a preponderance of the evidence that the encumbrance is for a purpose described by Subsection (b)(1) or (2) of this section and is in the minor's best interests.

(g) A parent or managing conservator executing a home equity loan on a minor's behalf under this section shall file an annual report with the court regarding the transaction. When the parent or managing conservator has expended the proceeds of a home equity loan authorized under this section, the parent or managing conservator, in addition, shall file with the county clerk a sworn report accounting for the proceeds.

(h) The court may not discharge the person's sureties from all further liability under the bond until the court:

(1) has approved the filing of the parent's or managing conservator's reports required under Subsection (g) of this section;

(2) finds that the parent or managing conservator used loan proceeds resulting from the minor's interest solely for the purposes authorized by this section; and

(3) has been presented with satisfactory evidence that the home equity loan has been repaid and is no longer considered an outstanding obligation.

(i) After the first anniversary of the date a parent or managing conservator executes a home equity loan authorized under this section, the court may, on motion of the borrower, reduce the amount of the surety bond required under this section to an amount that is not less than the outstanding balance of the loan.

(j) A parent of a minor may file an application under this section only if the parent has a homestead interest in the property that is the subject of the application.

(k) A minor may not disaffirm a home equity loan authorized by the court under this section.

Added by Acts 2005, 79th Leg., ch. 1204, Sec. 2, eff. Sept. 1, 2005.

Sec. 890. SALE OF PROPERTY OF WARD WITHOUT GUARDIANSHIP OF THE ESTATE. (a) This section applies only to a ward who has a guardian of the person but does not have a guardian of the estate.

(b) When a ward has an interest in real or personal property in an estate and the net value of the interest does not exceed \$100,000, the guardian may apply under oath to the court for an order to sell the ward's interest in the property without being appointed guardian of the estate. A ward may not disaffirm a sale of property pursuant to a court order under this section.

(c) Venue for an application under this section is the same as venue for an application for the appointment of a guardian for the ward. The application must contain the same information required by Section 889(b) of this code.

(d) On receipt of the application, the court shall set the application for hearing at a date not earlier than five days from the date of the filing of the application. If the court considers it necessary, the court may cause citation to be issued.

(e) The procedures and evidentiary requirements for a hearing of an application filed under this section are the same as the procedures and evidentiary requirements for a hearing of an application filed under Section 889 of this code.

(f) When the court enters the order of sale, the purchaser of the property shall pay the proceeds of the sale belonging to the ward into the court registry.

(g) Nothing in this section prevents the proceeds deposited in the court registry from being withdrawn as prescribed by Section 887 of this code.

Added by Acts 1997, 75th Leg., ch. 295, Sec. 4, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 127, Sec. 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1174, Sec. 10, eff. Sept. 1, 2001.

Sec. 890A. MORTGAGE OF RESIDENTIAL HOMESTEAD INTEREST OF A MINOR WARD. (a) In this section:

(1) "Home equity loan" means a loan made under Section 50(a)(6), Article XVI, Texas Constitution.

(2) "Residence homestead" has the meaning assigned by Section 11.13, Tax Code.

(b) This section applies only to a minor ward who has a guardian of the person but does not have a guardian of the estate.

(c) When a minor ward has an interest in a residence homestead and the net value of the interest does not exceed \$100,000, the guardian of the person of the ward may apply to the court for an order authorizing the guardian to receive an extension of credit on the ward's behalf that is secured, wholly or partly, by a lien on the homestead. Proceeds of the home equity loan attributable to the minor's interest may be used only to:

(1) make improvements to the homestead;

(2) pay for the education or maintenance expenses of the ward; or

(3) pay the outstanding balance of the loan.

(d) Venue for the application is the same as venue for an application for the appointment of a guardian for a ward. The application must contain the same information required by Section 889A of this code.

(e) On receipt of the application, the court shall set the application for hearing at a date not earlier than the fifth day after the date the application is filed. If the court considers it necessary, the court may cause citation to be issued.

(f) The guardian of the person, before the hearing, shall file a surety bond with the county clerk to the same extent and in the same manner as a parent or managing conservator of a minor is required to provide a surety bond under Section 889A of this code.

(g) The procedures and evidentiary requirements for a hearing of an application filed under this section are the same as the procedures and evidentiary requirements for a hearing of an application filed under Section 889A of this code.

(h) At the time of the hearing of the application filed under this section, the court, on approval of a bond required by Subsection (f) of this section, shall authorize the guardian to receive the extension of credit sought in the application if the court is satisfied from a preponderance of the evidence that the encumbrance is for a purpose described by Subsection (c)(1) or (2) of this section and is in the ward's best interests.

(i) A guardian of the person executing a home equity loan on a ward's behalf must account for the transaction, including the expenditure of the loan proceeds, in the annual accounting required by Section 741 of this code.

(j) The court may not discharge a guardian's sureties from all further liability under a bond required by this section or another provision of this code until the court:

(1) finds that the guardian used loan proceeds resulting from the ward's interest solely for the purposes authorized by this section; and

(2) has been presented with satisfactory evidence that the home equity loan has been repaid and is no longer considered an

outstanding obligation.

(k) A minor ward may not disaffirm a home equity loan authorized by the court under this section.

Added by Acts 2005, 79th Leg., ch. 1204, Sec. 2, eff. Sept. 1, 2005.

SUBPART G. INTERSTATE GUARDIANSHIPS

Sec. 891. TRANSFER OF GUARDIANSHIP TO FOREIGN JURISDICTION. (a) A guardian of the person or estate of a ward may apply with the court that has jurisdiction over the guardianship to transfer the guardianship to a court in a foreign jurisdiction if the ward has moved permanently to the foreign jurisdiction.

(b) Notice of the application to transfer a guardianship under this section shall be served personally on the ward and shall be given to the foreign court to which the guardianship is to be transferred.

(c) On the court's own motion or on the motion of the ward or any interested person, the court shall hold a hearing to consider the application to transfer the guardianship.

(d) The court shall transfer a guardianship to a foreign court if the court determines the transfer is in the best interests of the ward. The transfer of the guardianship must be made contingent on the acceptance of the guardianship in the foreign jurisdiction. To facilitate the orderly transfer of the guardianship, the court shall coordinate efforts with the appropriate foreign court.

Added by Acts 2001, 77th Leg., ch. 479, Sec. 1, eff. Sept. 1, 2001.

Sec. 892. RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP. (a) A guardian appointed by a foreign court to represent an incapacitated person who is residing in this state or intends to move to this state may file an application with a court in which the ward resides or intends to reside to have the guardianship transferred to the court.

(b) Notice of the application for receipt and acceptance of a foreign guardianship under this section shall be served personally on the ward and shall be given to the foreign court from which the guardianship is to be transferred.

(c) If an application for receipt and acceptance of a foreign guardianship is filed in two or more courts with jurisdiction, the proceeding shall be heard in the court with jurisdiction over the application filed on the earliest date if venue is otherwise proper in that court. A court that does not have venue to hear the application shall transfer the proceeding to the proper court.

(d) In reviewing an application for receipt and acceptance of a foreign guardianship, the court should determine:

(1) that the proposed guardianship is not a collateral attack on an existing or proposed guardianship in another jurisdiction in this or another state; and

(2) for a guardianship in which a court in one or more states may have jurisdiction, that the application has been filed in the court that is best suited to consider the matter.

(e) On the court's own motion or on the motion of the ward or any interested person, the court shall hold a hearing to consider the application for receipt and acceptance of a foreign guardianship.

(f) The court shall grant an application for receipt and acceptance of a foreign guardianship if the transfer of the guardianship from the foreign jurisdiction is in the best interests of the ward. In granting an application under this subsection, the court shall give full faith and credit to the provisions of the foreign guardianship order concerning the determination of the ward's incapacity and the rights, powers, and duties of the guardian.

(g) The court shall coordinate efforts with the appropriate foreign court to facilitate the orderly transfer of the guardianship.

(h) The denial of an application for receipt and acceptance of a guardianship under this section does not affect the right of a guardian appointed by a foreign court to file an application to be appointed guardian of the incapacitated person under Section 682 of this code.

Added by Acts 2001, 77th Leg., ch. 479, Sec. 1, eff. Sept. 1, 2001.

Sec. 893. REVIEW OF TRANSFERRED GUARDIANSHIP. Not later than the 90th day after the date a court grants an application for receipt and acceptance of a foreign guardianship under Section 892 of this code, the court shall hold a hearing to consider modifying

the administrative procedures or requirements of the transferred guardianship in accordance with local and state law.

Added by Acts 2001, 77th Leg., ch. 479, Sec. 1, eff. Sept. 1, 2001.

SUBPART H. CONTRACTS IN ARTS, ENTERTAINMENT, ADVERTISEMENT, AND SPORTS

Sec. 901. DEFINITIONS. In this subpart:

(1) "Advertise" means to solicit or induce, through print or electronic media, including radio, television, computer, or direct mail, to purchase consumer goods or services.

(2) "Advertisement contract" means a contract under which a person is employed or agrees to advertise consumer goods or services.

(3) "Artist" means:

(A) an actor who performs in a motion picture, theatrical, radio, television, or other entertainment production;

(B) a musician or musical director;

(C) a director or producer of a motion picture, theatrical, radio, television, or other entertainment production;

(D) a writer;

(E) a cinematographer;

(F) a composer, lyricist, or arranger of musical compositions;

(G) a dancer or choreographer of musical productions;

(H) a model; or

(I) any other individual who renders analogous professional services in a motion picture, theatrical, radio, television, or other entertainment production.

(4) "Arts and entertainment contract" means a contract under which:

(A) an artist is employed or agrees to render services in a motion picture, theatrical, radio, television, or other entertainment production; or

(B) a person agrees to purchase, secure, sell, lease, license, or otherwise dispose of literary, musical, or dramatic tangible or intangible property or any rights in that property for use in the field of entertainment, including a motion picture, television, the production of phonograph records, or theater.

(5) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(6) "Sports contract" means a contract under which an athlete is employed or agrees to participate, compete, or engage in a sports or athletic activity at a professional or amateur sports event or athletic event.

Added by Acts 2001, 77th Leg., ch. 799, Sec. 1, eff. Sept. 1, 2001.

Sec. 902. CONSTRUCTION. This subpart may not be construed to authorize the making of a contract that binds a minor beyond the seventh anniversary of the date of the contract.

Added by Acts 2001, 77th Leg., ch. 799, Sec. 1, eff. Sept. 1, 2001.

Sec. 903. APPROVAL OF CERTAIN CONTRACTS OF MINORS; NOT VOIDABLE. (a) A court, on petition of the guardian of the estate of the minor, may enter an order approving for purposes of this subpart an arts and entertainment contract, advertisement contract, or sports contract that is entered into by a minor. The court may approve the contract only after the guardian of the minor's estate provides to the other party to the contract notice of the petition and an opportunity to request a hearing in the manner provided by the court.

(b) The approval of a contract under this section extends to the contract as a whole and any of the terms and provisions of the contract, including any optional or conditional provision in the contract relating to the extension or termination of its term.

(c) A court may withhold approval of a contract under which part of the minor's net earnings under the contract will be set aside as provided by Section 904 of this code until the guardian of the minor's estate executes and files with the court written consent to the making of the order.

(d) An otherwise valid contract approved under this section may not be voidable solely on the ground that it was entered into by a person during the age of minority.

(e) Each parent of the minor is a necessary party to a proceeding brought under this section.

Added by Acts 2001, 77th Leg., ch. 799, Sec. 1, eff. Sept. 1, 2001.

Sec. 904. NET EARNINGS OF MINOR; SET ASIDE AND PRESERVATION. (a) In this section, "net earnings" means the total amount to be received for the services of the minor under the

contract less:

(1) the sum required by law to be paid as taxes to any government or governmental agency;

(2) a reasonable sum to be expended for the support, care, maintenance, education, and training of the minor;

(3) fees and expenses paid in connection with procuring the contract or maintaining employment of the minor; and

(4) attorney's fees for services rendered in connection with the contract or any other business of the minor.

(b) Notwithstanding any other law, the court may require in an order approving a contract under Section 903 of this code that a portion of the net earnings of the minor under the contract be set aside and preserved for the benefit of the minor in a trust created under Section 867 of this code or a similar trust created under the laws of another state. The amount to be set aside under this subsection must be a reasonable amount as determined by the court.

Added by Acts 2001, 77th Leg., ch. 799, Sec. 1, eff. Sept. 1, 2001.

Sec. 905. GUARDIAN AD LITEM. The court may appoint a guardian ad litem for a minor who has entered into an arts and entertainment contract, advertisement contract, or sports contract if the court finds that appointment of the ad litem would be in the best interest of the minor.

Added by Acts 2001, 77th Leg., ch. 799, Sec. 1, eff. Sept. 1, 2001.