

PROPERTY CODE

CHAPTER 142. MANAGEMENT OF PROPERTY RECOVERED IN SUIT BY A NEXT FRIEND OR GUARDIAN AD LITEM

Sec. 142.001. MANAGEMENT BY DECREE. (a) In a suit in which a minor or incapacitated person who has no legal guardian is represented by a next friend or an appointed guardian ad litem, the court, on application and hearing, may provide by decree for the investment of funds accruing to the minor or other person under the judgment in the suit.

(b) If the decree is made during vacation, it must be recorded in the minutes of the succeeding term of the court.

Acts 1983, 68th Leg., p. 3711, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 14(b), eff. Oct. 2, 1984; Acts 1999, 76th Leg., ch. 195, Sec. 2, eff. Sept. 1, 1999.

Sec. 142.002. MANAGEMENT BY BONDED MANAGER. (a) In a suit in which a minor or incapacitated person who has no legal guardian is represented by a next friend or an appointed guardian ad litem, the court in which a judgment is rendered may by an order entered of record authorize the next friend, the guardian ad litem, or another person to take possession of money or other personal property recovered under the judgment for the minor or other person represented.

(b) The next friend, guardian ad litem, or other person may not take possession of the property until the person has executed a bond as principal that:

(1) is in an amount at least double the value of the property or, if a surety on the bond is a solvent surety company authorized under the law of this state to execute the bond, is in an amount at least equal to the value of the property;

(2) is payable to the county judge; and

(3) is conditioned on the obligation of the next friend, guardian ad litem, or other person to use the property under the direction of the court for the benefit of its owner and to return the property, with interest or other increase, to the person entitled to receive the property when ordered by the court to do so. Acts 1983, 68th Leg., p. 3711, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 14(c), eff. Oct. 2, 1984; Acts 1999, 76th Leg., ch. 195, Sec. 3, eff. Sept. 1, 1999.

Sec. 142.003. COMPENSATION AND DUTIES OF MANAGERS. (a) A person who manages property under Section 142.001 or 142.002 is entitled to receive compensation as allowed by the court.

(b) The person shall make dispositions of the property as ordered by the court and shall return the property into court on the order of the court.

Acts 1983, 68th Leg., p. 3711, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 142.004. INVESTMENT OF FUNDS. (a) In a suit in which a minor or incapacitated person who has no legal guardian is represented by a next friend or an appointed guardian ad litem, any money recovered by the plaintiff, if not otherwise managed under this chapter, may be invested:

(1) by the next friend or guardian ad litem in:

(A) the Texas tomorrow fund established by Subchapter F, Chapter 54, Education Code; or

(B) interest-bearing time deposits in a financial institution doing business in this state and insured by the Federal Deposit Insurance Corporation; or

(2) by the clerk of the court, on written order of the court of proper jurisdiction, in:

(A) the Texas tomorrow fund established by Subchapter F, Chapter 54, Education Code;

(B) interest-bearing deposits in a financial institution doing business in this state and insured by the Federal Deposit Insurance Corporation;

(C) United States treasury bills;

(D) an eligible interlocal investment pool that meets the requirements of Sections 2256.016, 2256.017, and 2256.019, Government Code; or

(E) a no-load money market mutual fund, if the fund:

(i) is regulated by the Securities and Exchange Commission;

(ii) has a dollar weighted average stated maturity of 90 days or fewer; and

(iii) includes in its investment objectives the maintenance of a stable net asset value of \$1 for each share

(b) If the money invested under this section may not be withdrawn from the financial institution without an order of the court, a next friend or guardian ad litem who makes the investment is not required to execute a bond with respect to the money.

(c) When money invested under this section is withdrawn, the court may:

(1) on a finding that the person entitled to receive the money is no longer under the disability, order the funds turned over to the person; or

(2) order management of the funds under another provision of this chapter.

(d) Interest earned on an account invested by the clerk of the court shall be paid in the same manner as interest earned on an account under Chapter 117, Local Government Code.

(e) If money is invested under Subsection (a)(2)(E), the court may waive any bonding requirement.

Acts 1983, 68th Leg., p. 3712, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 14(d), eff. Oct. 2, 1984; Acts 1997, 75th Leg., ch. 505, Sec. 22, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 94, Sec. 1, eff. May 17, 1999; Acts 1999, 76th Leg., ch. 195, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 17.002, eff. Sept. 1, 2001.

Sec. 142.005. TRUST FOR PROPERTY.

Text of subsec. (a) effective until January 1, 2006

(a) In a suit in which a minor who has no legal guardian or an incapacitated person is represented by a next friend or an appointed guardian ad litem, the court may, on application by the next friend or the guardian ad litem and on a finding that the creation of a trust would be in the best interests of the minor or incapacitated person, enter a decree in the record directing the clerk to deliver any funds accruing to the minor or incapacitated person under the judgment to a trust company or a state or national bank having trust powers in this state.

Text of subsec. (a) effective January 1, 2006

(a) In a suit in which a minor who has no legal guardian or an incapacitated person is represented by a next friend or an appointed guardian ad litem, any court of record with jurisdiction to hear the suit may, on application by the next friend or the guardian ad litem and on a finding that the creation of a trust would be in the best interests of the minor or incapacitated person, enter a decree in the record directing the clerk to deliver any funds accruing to the minor or incapacitated person under the judgment to a trust company or a state or national bank having trust powers in this state.

(b) The decree shall provide for the creation of a trust for the management of the funds for the benefit of the minor or incapacitated person and for terms, conditions, and limitations of the trust, as determined by the court, that are not in conflict with the following mandatory provisions:

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

(2) the trustee may disburse amounts of the trust's principal, income, or both as the trustee in his sole discretion determines to be reasonably necessary for the health, education, support, or maintenance of the beneficiary;

(3) the income of the trust not disbursed under Subdivision (2) is added to the principal of the trust;

(4) if the beneficiary is a minor, the trust terminates on the death of the beneficiary, on the beneficiary's attaining an age stated in the trust, or on the 25th birthday of the beneficiary, whichever occurs first, or if the beneficiary is an incapacitated person, the trust terminates on the death of the beneficiary or when the beneficiary regains capacity;

(5) the trustee serves without bond; and

(6) the trustee receives reasonable compensation paid from trust's income, principal, or both on application to and approval of the court.

(c) A trust established under this section may provide that:

(1) distributions of the trust principal before the termination of the trust may be made from time to time as the beneficiary attains designated ages and at designated percentages of the principal; and

(2) distributions, payments, uses, and applications

of all trust funds may be made to the legal or natural guardian of the beneficiary or to the person having custody of the beneficiary or may be made directly to or expended for the benefit, support, or maintenance of the beneficiary without the intervention of any legal guardian or other legal representative of the beneficiary.

Text of subsec. (d) effective until January 1, 2006

(d) A trust created under this section may be amended, modified, or revoked by the court at any time before its termination, but is not subject to revocation by the beneficiary or a guardian of the beneficiary's estate. If the trust is revoked by the court before the beneficiary is 18 years old, the court may provide for the management of the trust principal and any undistributed income as authorized by this chapter. If the trust is revoked by the court after the beneficiary is 18 years old, the trust principal and any undistributed income shall be delivered to the beneficiary after the payment of all proper and necessary expenses.

Text of subsec. (d) effective January 1, 2006

(d) A court that creates a trust under this section has continuing jurisdiction and supervisory power over the trust, including the power to construe, amend, revoke, modify, or terminate the trust. A trust created under this section is not subject to revocation by the beneficiary or a guardian of the beneficiary's estate. If the trust is revoked by the court before the beneficiary is 18 years old, the court may provide for the management of the trust principal and any undistributed income as authorized by this chapter. If the trust is revoked by the court after the beneficiary is 18 years old, the trust principal and any undistributed income shall be delivered to the beneficiary after the payment of all proper and necessary expenses.

(e) On the termination of the trust under its terms or on the death of the beneficiary, the trust principal and any undistributed income shall be paid to the beneficiary or to the representative of the estate of the deceased beneficiary.

(f) A trust established under this section prevails over any other law concerning minors, incapacitated persons, or their property, and the trust continues in force and effect until terminated or revoked, notwithstanding the appointment of a guardian of the estate of the minor or incapacitated person, or the attainment of the age of majority by the minor.

(g) Notwithstanding any other provision of this chapter, if the court finds that it would be in the best interests of the minor or incapacitated person for whom a trust is created under this section, the trust may contain provisions determined by the court to be necessary to establish a special needs trust as specified under 42 U.S.C. Section 1396p(d)(4)(A).

(h) A trust created under this section is subject to Subtitle B, Title 9.

(i) Notwithstanding Subsection (h), this section prevails over a provision in Subtitle B, Title 9, that is in conflict or inconsistent with this section.

(j) A provision in a trust created under this section that relieves a trustee from a duty, responsibility, or liability imposed by this section or Subtitle B, Title 9, 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.

Acts 1983, 68th Leg., p. 3712, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 14(e), (f), eff. Oct. 2, 1984; Acts 1997, 75th Leg., ch. 128, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1154, Sec. 3, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 148, Sec. 28, eff. Jan. 1, 2006.

Sec. 142.006. CLAIMS AGAINST PROPERTY. If any person claims an interest in property subject to management under this chapter, the court having authority over the property may hear evidence on the interest and may order the claim or the portion of the claim found to be just to be paid to the person entitled to receive it.

Acts 1983, 68th Leg., p. 3714, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 142.007. INCAPACITATED PERSON. For the purposes of this chapter, "incapacitated person" means a person who is impaired

because of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or any other cause except status as a minor to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person. Added by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 14(g), eff. Oct. 2, 1984.

Sec. 142.008. STRUCTURED SETTLEMENT. (a) In a suit in which a minor or incapacitated person who has no legal guardian is represented by a next friend or an appointed guardian ad litem, the court, on a motion from the parties, may provide for a structured settlement that:

- (1) provides for periodic payments; and
- (2) is funded by:
 - (A) an obligation guaranteed by the United States government; or
 - (B) an annuity contract that meets the requirements of Section 142.009.

(b) The person obligated to fund a structured settlement shall provide to the court:

- (1) a copy of the instrument that provides funding for the structured settlement; or
- (2) an affidavit from an independent financial consultant that specifies the present value of the structured settlement and the method by which the value is calculated.

(c) A structured settlement provided for under this section is solely for the benefit of the beneficiary of the structured settlement and is not subject to the interest payment calculations contained in Section 117.054, Local Government Code.

Added by Acts 1999, 76th Leg., ch. 195, Sec. 5, eff. Sept. 1, 1999.

Sec. 142.009. ANNUITY CONTRACT REQUIREMENTS FOR STRUCTURED SETTLEMENT. (a) An insurance company providing an annuity contract for a structured settlement as provided by Section 142.008 must:

- (1) be licensed to write annuity contracts in this state;
- (2) have a minimum of \$1 million of capital and surplus; and
- (3) be approved by the court and comply with any requirements imposed by the court to ensure funding to satisfy periodic settlement payments.

(b) In approving an insurance company under Subsection (a)(3), the court may consider whether the company:

- (1) holds an industry rating equivalent to at least two of the following rating organizations:

- (A) A. M. Best Company: A++ or A+;
- (B) Duff & Phelps Credit Rating Company Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA;
- (C) Moody's Investors Service Claims Paying Ability Rating: Aa3, Aa2, Aa1, or aaa; or
- (D) Standard & Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;

(2) is an affiliate, as that term is described by Section 823.003, Insurance Code, of a liability insurance carrier involved in the suit for which the structured settlement is created; or

(3) is connected in any way to a person obligated to fund the structured settlement.

Added by Acts 1999, 76th Leg., ch. 195, Sec. 5, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 96, Sec. 2, eff. Sept. 1, 2001;

Acts 2003, 78th Leg., ch. 1276, Sec. 10A.551, eff. Sept. 1, 2003.