

## CHAPTER 929

## H.B. No. 2034

An Act relating to the appointment and duties of temporary guardians and the designation of guardians under the Texas Probate Code.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Section 131 of the Texas Probate Code is amended to read as follows:

**Sec. 131. PROCEDURE**

(a) *Necessity of Appointment.* Whenever it appears to the county judge that the interest of a decedent's estate, or the interest of any minor, *incapacitated person as defined in Section 130A of this code*, ~~person of unsound mind,~~ or common or habitual drunkard, and his or her estate, or either of them, requires immediate appointment of a personal representative, he shall, by written order, appoint a suitable temporary representative, with such limited powers as the circumstances of the case require, and such appointment may be made permanent, as herein provided.

(b) *A written application for the appointment of a temporary guardian may be filed prior to the court's appointment of such guardian but in no case shall such application be filed later than the end of the next business day of the court after appointment of such temporary guardian. The application shall state:*

- (i) the name and address of the subject of the guardianship proceeding;
- (ii) the danger alleged to be imminent;
- (iii) the type of appointment and the particular protection and assistance being requested;
- (iv) the facts and reasons supporting the allegations and requests;
- (v) the name, address, and qualification of the proposed temporary guardian;
- (vi) the name, address, and interest of the applicant. [Manner of Appointment: Such

appointment may be made with or without written application and without notice or citation. The order shall designate the appointee appropriately, as "temporary administrator" of the decedent's estate, or as "temporary guardian" of the person or of the estate; or both, of such minor, person of unsound mind, or common or habitual drunkard; fix the bond to be given and define the powers conferred on the appointee. When any such appointee has taken and filed his oath and filed with the county clerk a bond approved by the court, the clerk shall issue to the appointee letters which shall set forth the powers to be exercised by the appointee.]

(c) At the earliest of the filing of an application for temporary guardianship or the appointment of such guardian, an attorney shall be appointed to represent the respondent in all guardianship proceedings in which independent counsel has not been retained by or on behalf of that individual. [Perpetuation of Appointment: The order making the appointment shall state that, unless the same is contested after service of citation, it shall be continued in force for such period of time as the court shall deem in the interest of the estate or person involved, or it shall be made permanent, if found by the court to be necessary.]

(d) Upon the filing of an application for temporary guardianship the clerk shall issue notice which shall be served upon the respondent, the guardian, and the respondent's appointed attorney. 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 and, if applicable, a copy of the order appointing temporary guardian, must be attached to the notice. [Citation Relative to Perpetuation: Immediately after such appointment the clerk shall issue and cause to be posted a notice, and if necessary issue citations, to all interested persons to appear at the time stated in such writ and contest said appointment if they so desire; and such notice or citation shall state that, if no contest is made, the appointment will be continued for such time as appears to the interest of the estate or person involved; or that, if found necessary by the court, it shall be made permanent.]

(e)(1) A hearing shall be held within 10 days of the filing of the application for temporary guardianship unless extended as set out in Subdivision 2 below at which the respondent has the following rights:

- (i) prior notice;
- (ii) representation by counsel;
- (iii) be present;
- (iv) present evidence and confrontation and cross-examine witnesses;
- (v) right to a closed hearing if requested by respondent or his attorney.

(2) Every temporary guardianship granted prior to a hearing on the application required by Subsection (e)(1) above shall expire by its terms at the conclusion of such hearing unless within this time the respondent or his attorney consents that such order may be extended for a longer period not to exceed 60 days from the date of the filing of the application for temporary guardianship.

(3) Every temporary guardianship granted prior to a hearing on the application required by Subsection (e)(1) above shall be set down for hearing at the earliest possible date and takes precedence over all matters except older matters of the same character.

(4) Every temporary guardianship granted prior to a hearing on the application required by Subsection (e)(1) above shall include an order setting a certain date for hearing on the application for temporary guardianship.

(5) On one day's notice to the party who obtained a temporary guardianship prior to a hearing on the application required by Subsection (e)(1) above, the respondent or his attorney may appear and move for its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require. [Contest: If the appointment is contested, the court shall hear and determine the same, and, during the pendency of such contest, the temporary appointee shall continue to act as such. If the appointment is set aside, the court shall require the appointee to prepare and file, under oath, a complete exhibit of the condition of the estate which has come into his possession, and show what disposition he has made of the same or any portion thereof.]

(f) If at the conclusion of the hearing required by Subsection (e)(1) above the court determines that the applicant has established that there is imminent danger that the physical health or safety of the respondent will be seriously impaired and/or that respondent's estate will be seriously damaged or dissipated unless immediate action is taken, it shall appoint a temporary guardian by

written order. The court shall assign to the temporary guardian only those duties and powers necessary to protect against the imminent danger shown.

(g) At no time shall any temporary guardianship remain in effect for longer than 60 days.

(h) If after the hearing required by Subsection (e)(1) above the court appoints a temporary guardian, then all costs of court including attorney's fees may be assessed as provided in Section 247 of this code.

**SECTION 2.** Chapter 5, Texas Probate Code, is amended by adding Section 118A to read as follows:

**Sec. 118A. DESIGNATION OF GUARDIAN BEFORE NEED ARISES.** (a) A person, other than a minor or an incompetent, may designate by a written declaration persons to serve as guardian of the person of the declarant or the estate of the declarant in the event the declarant becomes incompetent. The declaration must be attested to by at least two credible witnesses 14 years of age or older who are not named as guardian or alternative 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) The declaration must 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. A properly executed and witnessed declaration and affidavit are prima facie evidence that the declarant was competent at the time he executed the declaration and that the guardian named in the declaration would serve the best interests of the ward.

(d) The declaration and 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. 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 fails to 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 qualified designated alternate guardian named in the declaration. If the guardian and all alternate guardians fail to 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.

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

(f) 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.

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

**DECLARATION OF GUARDIAN IN THE EVENT OF LATER INCOMPETENCE 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, fails, or refuses to qualify, or resigns, the next named alternate guardian succeeds the prior named guardian and 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 \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
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 Declaration of Guardian and that he had made and executed it for the purposes therein expressed. 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 \_\_\_\_\_, 19\_\_\_\_*

\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission expires:

**SECTION 3.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 17, 1985, by a non-record vote; House concurred in Senate amendments to H.B. No. 2034 on May 27, 1985, by a non-record vote; passed by the Senate, with amendments, on May 26, 1985, by the following vote: Yeas 31, Nays 0.

Approved: June 15, 1985

Effective: August 26, 1985