

## CHAPTER 957

H.B. No. 2685

## AN ACT

relating to guardianships of the person or estate of incapacitated persons.

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

SECTION 1. The Texas Probate Code is amended by adding Chapter XIII to read as follows:

## CHAPTER XIII. GUARDIANSHIP

## PART 1. GENERAL PROVISIONS

SUBPART A. DEFINITIONS; PURPOSE; APPLICABILITY;  
PROCEEDINGS IN REMSec. 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) "Corporate fiduciary" means a trust company or bank having trust powers, existing or doing business under the laws of this state or of 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.

(6) "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.

(7) "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.

(8) "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.

(9) "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.

(10) "Guardianship program" means a local, county, or regional program that provides guardianship and related services to an incapacitated person or other person who needs assistance in making decisions concerning the person's own welfare or financial affairs.

(11) "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;

(C) a missing person; or

(D) a person who must have a guardian appointed to receive funds due the person from any governmental source.

(12) "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.

(13) "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.

(14) "Minutes" means the guardianship minutes.

(15) "Missing person" means a person reported by an executive department of the United States to be a prisoner of war or missing in the course of public service to the United States.

(16) "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.

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

(18) "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.

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

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

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

(22) "Private professional guardian" means a person, other than an attorney or a corporate fiduciary, who is engaged in the business of providing guardianship services.

(23) "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.

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

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

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

(27) "Statutory probate court" means a statutory court whose jurisdiction is limited by statute to the general jurisdiction of a probate court and a court whose statutorily designated name contains the word "probate." County courts at law exercising probate jurisdiction are not statutory probate courts under this chapter unless the statutorily designated name of the county courts at law includes the word "probate."

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

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

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

(31) The masculine gender includes the feminine and neuter.

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.

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.

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.

## 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.

Sec. 606. **DISTRICT COURT AND OTHER COURT OF RECORD JURISDICTION.** (a) The district court has original control and jurisdiction over guardians and wards under regulations as may be prescribed by law.

(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 illness matters, and other matters covered by this chapter shall be filed and heard in the county court, except that in contested guardian-

ship 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, request as provided by Section 25.0022, Government Code, and its subsequent amendments the assignment of a statutory probate judge to hear the contested portion of the proceeding, or transfer the contested portion of the proceeding to the district court, which may hear the transferred contested matters as if originally filed in the district court. The county court continues 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. In contested matters transferred to the district court as provided by this subsection, the district court, concurrently with the county court, has the general jurisdiction of a probate court. On resolution of all pending contested matters, the district court shall transfer the contested portion of the guardianship proceeding to the county court for further proceedings not inconsistent with the orders of the district court. If a contested portion of the proceeding is transferred to a district court under this subsection, 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 a 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 illness matters, or other matters addressed by this chapter shall be filed and heard in those courts and the constitutional county court, rather than in the district courts, unless otherwise provided by the legislature, and 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 statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court. The court to which the proceeding is transferred may hear the proceeding as if originally filed in the court.

(d) A statutory probate court has concurrent jurisdiction with the district court in all actions by or against a person in the person's capacity as guardian.

(e) A court that exercises original probate jurisdiction has the power to hear all matters incident to an estate. When a surety is called on to perform in place of a guardian, a court exercising original probate jurisdiction may award judgment against the guardian in favor of the guardian's surety in the same suit, even if the ward has died.

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

**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 or district 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 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. In a situation in which the jurisdiction of a statutory probate court is concurrent with that of a district court, a cause of action appertaining to or incident to a guardianship estate shall be brought in a statutory probate court rather than in the district court.

(c) In all actions by or against a person in the person's capacity as a guardian, a statutory probate court has concurrent jurisdiction with a district court.

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

(e) Subsections (c) and (d) of this section apply whether or not the matter is appertaining to or incident to a guardianship estate.

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 and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to the guardianship estate.

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 Section 11.05(h), and its subsequent amendments, in regard to enforcing an order rendered by the court from which the proceeding was transferred.

#### 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) A proceeding for the appointment of a guardian for the estate of a missing person may be brought:

- (1) in the county in which the missing person's spouse resides;
- (2) if there is no spouse, in the county in which a parent or child of the missing person resides; or
- (3) if there is no spouse, parent, or child, in the county in which the missing person's next of kin resides.

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.

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.

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.

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.

Sec. 615. **TRANSCRIPT 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 and make out a complete certified transcript of all the orders, decrees, judgments, and proceedings in the guardianship. On payment of the clerk's fees, the clerk shall transmit the transcript, with the original papers in the case, to the county clerk of the county to which the guardianship was ordered removed.

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

- (1) the transcript required by Section 615 of this code is 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 transcript is filed in the court ordering the removal by the county clerk of the county to which the guardianship was ordered removed.

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.

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.*

### 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.*

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.*

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.*

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.

Sec. 625. **GUARDIANSHIP MINUTES AND PAPERS TO BE RECORDED THEREIN.** The county clerk shall keep a record book styled "Guardianship Minutes" and shall enter in the guardianship minutes all orders in full, judgments, decrees, and proceedings of the court, in addition to 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.

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.

Sec. 627. **INDEX.** The county clerk shall properly index each record book and keep it open for public inspection but may not release it from the clerk's custody.

Sec. 628. **USE OF RECORDS AS EVIDENCE.** The record books described in other sections of this chapter, or certified copies of the record books are evidence in any court of this state.

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.

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.

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.

#### 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.

**Sec. 633. NOTICE AND CITATION FOR APPLICATION OF GUARDIANSHIP.** (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 notice stating that the application for guardianship was filed, the name of the proposed ward, and the name of the applicant. The notice 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.

(c) A copy of the notice shall be posted, and the sheriff or other officer posting the notice shall return the original notice, officially signed and marked in writing with the time and place of posting.

(d) The sheriff or other officer posting the notice shall personally serve a copy of the notice, with citation to appear and answer the application for guardianship, to:

(1) the proposed ward, unless the proposed ward is a missing person, or a parent with whom the minor resides if the proposed ward is a minor who is 14 years of age or younger;

(2) the proposed ward's parents; and

(3) any conservator or person having control of the care and welfare of the proposed ward.

(e) The court clerk, at the applicant's request, or the applicant shall mail a copy of the notice by registered or certified mail, return receipt requested, to the following persons if their whereabouts are known or can be reasonably ascertained:

(1) to the spouse, the parents, all siblings, and all children of a proposed ward; and

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

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

(g) 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 this section.

Sec. 634. **SERVICE ON ATTORNEY.** 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(f) of this code, an attorney ad litem may not waive personal service of citation. A notice served on an attorney under this section may be served by registered or certified mail 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. 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.

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.

Sec. 636. **NOTICES TO VETERANS ADMINISTRATION 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 Veterans Administration, or when a claim against the estate of a ward who is a beneficiary of the Veterans Administration 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 clerk of the court in which the account, application, petition, or claim is filed shall give notice of the hearing to the office of Veterans Administration in whose territory the court is located of the hearing by mailing to the office a certified copy of the account, application, petition, or claim not less than 15 days before the hearing date. An office of Veterans Administration, through its attorney, may waive the service of notice and the time within which a hearing may be had in those cases. The account, application, petition, or claim shall be filed in duplicate, and the clerk of the court is entitled to a fee of 25 cents, taxable against the estate, for certifying the copy of the account, application, petition, or claim. The clerk shall mail to the office of the Veterans Administration the certified copy. If not filed in duplicate, the clerk shall be entitled to an additional fee of 15 cents per 100 words for making a copy of the account, application, petition, or claim. The additional copying costs shall be taxed and collected from the guardian and may not be charged to the ward's estate.

#### 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.

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

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

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

- (1) the proceeding is contested;
- (2) the motion or application is superseded by local rules; or
- (3) the proceeding is an application for the appointment of a guardian.

(b) A motion or application that a court may consider under submission must be accompanied by a notice of the filing of the motion or application that contains the date the motion or application is to be submitted to the court. The time for notice provided under this subsection may not be less than the time otherwise prescribed by law for notice of other motions or applications filed with the court.

(c) Without court approval, a motion or application that a court may consider under submission may not be submitted to the court before the 10th day after the date the motion or application was filed.

(d) A motion or application must be submitted to the court for a ruling on the date of submission that is contained in the notice of submission under Subsection (b) of this section or on a later date that is approved by the court.

(e) Without court approval, a response to a motion or application that a court may consider under submission must be in writing and must be filed before the second business day before the date of submission.

(f) On the date of submission or another date that is approved by the court, the court shall schedule a hearing for a motion or application that a court may consider under submission only if a response to the motion or application is filed by a person interested in the guardianship who:

- (1) contests the relief sought in the motion or application;
- (2) requests to be present at the hearing; or
- (3) requests oral argument on the person's exceptions to the motion or application.

(g) 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.

(h) 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.

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

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

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.

Sec. 646. APPOINTMENT OF ATTORNEY AD LITEM AND INTERPRETER. (a) In a proceeding under this chapter for the appointment of a guardian for a person other than a missing person, 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 be certified by the State Bar of Texas as having successfully completed a course of study in guardianship law and procedure sponsored by the state bar.

(c) For certification under Subsection (b) of this section, the state bar may not require more than four hours of credit.

(d) A certificate issued under Subsection (b) of this section expires on the second anniversary of the date the certificate was issued. A person whose certificate has expired must obtain a new certificate to be eligible for appointment as an attorney ad litem. The applicant is not required to again complete the course of study required by Subsection (b) of this section unless the state bar determines that the course has changed substantially since the person last completed the course.

(e) Subsections (b)–(d) of this section do not apply to a person who served as attorney ad litem in a guardianship proceeding before September 1, 1993.

(f) 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.

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.

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.

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.

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.

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.

#### 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.

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.

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.

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.

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.

#### SUBPART G. LETTERS OF GUARDIANSHIP

Sec. 659. *ISSUANCE OF LETTERS OF GUARDIANSHIP.* (a) When a person who is appointed guardian has qualified by taking the oath and giving any bond required by law, the clerk shall issue to the guardian a certificate under seal, stating the fact of the appointment, of the qualification, and the date of the appointment and qualification. The certificate issued by the clerk constitutes letters of guardianship. The order of the court appointing the guardian is effective on the issuance of letters of guardianship. The order is evidence of the authority of the guardian to act within the scope of the powers and duties set forth in the order.

(b) Letters of guardianship expire one year and 120 days after the date of issuance unless renewed.

(c) The clerk shall renew letters of guardianship on the receipt and approval by the court of the guardian's annual accounting. If the guardian's annual accounting is disapproved, the clerk may not issue further letters of guardianship to that guardian relating to the ward or the ward's estate unless ordered by the court.

Sec. 660. *LETTERS OR CERTIFICATE MADE EVIDENCE.* 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.

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.

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.

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.

#### SUBPART H. COMPENSATION, EXPENSES, AND COURT COSTS

**Sec. 665. COMPENSATION OF GUARDIAN.** (a) The court may authorize compensation for a guardian serving as guardian of the person alone from available funds of the ward's estate. The court shall set the compensation in an amount not exceeding five percent of the ward's 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 Chapter 32, Human Resources Code.

(b) The guardian of the estate is entitled to 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 on a court finding that the guardian has taken care of and managed the estate in compliance with the standards of this chapter. In this section, the term "money paid out" does not include any money loaned, invested, or paid over on the settlement of the guardianship. If the fee is an unreasonably low amount, the court may authorize reasonable compensation to a guardian for services as guardian of the estate. 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 has not adequately performed the duties required of the guardian under this chapter; or
- (2) the guardian has been removed for cause.

**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.

**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 entered on the claim docket; and
- (4) acted on by the court in the same manner as other claims against the guardianship estate.

**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.

**Sec. 669. COSTS AGAINST GUARDIANSHIP.** 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.

#### 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.*

**Sec. 672. ANNUAL DETERMINATION AS TO WHETHER GUARDIANSHIP SHOULD BE CONTINUED, MODIFIED, OR TERMINATED.** (a) *A court in which a guardianship proceeding is pending shall review annually a guardianship that does not give a guardian full authority over an incapacitated person 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 shall:*

- (1) *review a report prepared by a court visitor under Section 648 of this code; or*
- (2) *conduct a hearing if necessary.*

(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.*

#### SUBPART J. LIABILITY OF GUARDIAN FOR CONDUCT OF WARD

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

### 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.*

**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) 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. On compliance with this code, an eligible person is also entitled to be appointed guardian of the children's estates after the death of the parent.

Sec. 677. **GUARDIANS OF PERSONS OTHER THAN MINORS.** 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.

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, abandoning or endangering a child, or incest.

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 attested to 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) 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 the declarant 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 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.

(e) 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.

(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 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 \_\_\_\_\_, 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 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 \_\_\_\_\_, 19\_\_\_

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

*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 14 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 14 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.*

*Sec. 681. PERSONS INELIGIBLE TO BE 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.*

*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) the social security number of the proposed ward and of the person the applicant desires to have appointed as guardian;*
- (4) whether guardianship of the person or estate, or both, is sought;*
- (5) 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;*
- (6) the facts requiring that a guardian be appointed and the interest of the applicant in the appointment;*
- (7) the nature and description of any guardianship of any kind existing for the proposed ward in this or any other state;*

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

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

(10) the requested term, if known, of the guardianship;

(11) 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;

(12) if the proposed ward is a minor, the names of the parents and next of kin of the proposed ward and whether either or both of the parents are deceased;

(13) 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;

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

(15) if the proposed ward is a missing person:

(A) the last known residence of the missing person;

(B) the name of the executive department of the United States reporting the proposed ward as a missing person, the date of the report, and the last known whereabouts of the missing person; and

(C) the names and addresses of the missing person's spouse, children, and parents, or, if there is no spouse, child, or parent, the names and addresses of the missing person's next of kin;

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

(17) if applicable, that the person whom the applicant desires to have appointed as a guardian is a private professional guardian who has complied with the requirements of Section 697 of this code.

**Sec. 683. COURT'S INITIATION OF GUARDIANSHIP PROCEEDINGS.** 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.

**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) the court has venue of the case;

(3) 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;

(4) the rights of persons or property will be protected by the appointment of a guardian;

(5) 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

(6) if the guardian is appointed for a missing person, the person was reported missing by an executive department of the United States at least six months earlier than the date of the filing of the application and currently is missing.

(b) 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 missing person or 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.

(c) 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.

(d) 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.

**Sec. 685. HEARING FOR APPOINTMENT OF GUARDIAN; RIGHT TO JURY TRIAL.** (a) A proposed ward other than a missing person must be present at a hearing to appoint a guardian unless the court, on the record, 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 missing person or 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.

**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, a missing person, 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.

**Sec. 687. EXAMINATION AND REPORTS.** (a) The court may not grant an application to create a guardianship for an incapacitated person unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that:

(1) states that, in the opinion of the physician, the person for whom the appointment of a guardian is sought is incapacitated; and

(2) generally describes the extent of the incapacity.

(b) If the court determines it is necessary, the court may appoint the necessary physicians to examine the proposed ward. A physician who examines the proposed ward shall make available to an attorney ad litem appointed to represent the proposed ward, for inspection, a report that:

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

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

(3) states 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) states 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) describes the precise physical and mental conditions underlying a diagnosis of senility, if applicable; and

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

(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 the proposed ward has been examined according to the rules adopted by the department not earlier than six 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 department and shall submit written findings and recommendations to the court.

Sec. 688. **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 Sections 646 and 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 Sections 646 and 687 of this code, as applicable, the county is responsible for the cost of those services.

Sec. 688A. **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, may authorize compensation of an attorney who represents the person at the application hearing from available funds of the ward's estate regardless of whether that person is appointed the ward's guardian.

(b) The court may not authorize compensation under this section unless the court finds that the attorney acted in good faith and for just cause in the attorney's representation of the person who filed the application.

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.

Sec. 690. **ONLY ONE PERSON 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 to the advantage of the ward. Nothing in this section prohibits the joint appointment of a husband and wife, or of coguardians appointed under the laws of a jurisdiction other than this state.

Sec. 691. **AGENCY AS LAST RESORT.** Except as a last resort, the court may not appoint as guardian the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, a community mental health and mental retardation center, or any other agency, public or private, that is directly providing services to the incapacitated person.

Sec. 692. **ORDER APPOINTING GUARDIAN.** 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 appraisal 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.



*Sec. 693. ORDER OF COURT. (a) 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.*

*(b) 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 shall include that determination as a finding of fact in its final order in the proceeding, and 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.*

*(c) 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.*

*(d) An order appointing a guardian must contain findings of fact and specify:*

*(1) the information required by Section 692 of this code;*

*(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.*

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

*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;*

*(4) returns to the United States, if the person was a missing person and the court grants the motion of any interested person to vacate the original order of guardianship; or*

*(5) 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) Except as provided by Subsection (c) of this section, a ward or any person interested in the ward's welfare may petition the court for an order:*

*(1) finding that the ward no longer needs the guardianship and ordering that the guardian resign or be removed;*

*(2) finding that the ward lacks the capacity to do some or all of the tasks necessary to care for himself or herself or to manage the ward's property and granting additional powers or duties to the guardian with respect to the care of the ward or the management of the ward's property by the guardian; or*

*(3) finding that the ward has regained the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage the ward's property and:*

*(A) limiting the powers or duties of the guardian with respect to the care of the ward or the management of the ward's property by the guardian; and*

*(B) permitting the ward to care for himself or herself or to manage the ward's property commensurate with the ward's ability.*

(e) 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.

(f) If a nonresident guardian of a nonresident ward qualifies as guardian under this chapter, the guardianship of any resident guardian may be terminated.

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.

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 has not complied with the requirements of Section 697 of this code.

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 certification. The application must include a sworn statement containing the following information concerning a private professional guardian or a 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 certification begins on the date that the requirements are met and extends through December 31 of the initial year. After the initial year of certification, the term of the certification 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.

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 a private professional guardian or a person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian.

(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.

(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.

### 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.

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

**Sec. 701. TIME FOR TAKING OATH AND GIVING BOND.** 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.

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

(b) A bond is not required to be given by a guardian that is a corporate fiduciary, as defined by Section 501(5) of this code.

(c) When a will that is made by a surviving parent and is probated in a court in this state directs that the guardian appointed in the will serve without bond, the court finding that the person is qualified shall issue letters of guardianship to the person named to be appointed guardian in the will without requirement of bond.

**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 domestic state or national bank, trust company, savings and loan association, or other domestic corporate depository, duly incorporated and qualified to act as a national bank, trust company, savings and loan association, or other domestic corporate depository 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 domestic state or national bank, trust company, savings and loan association, or other domestic corporate depository or with any other corporate depository approved by the court. 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.*

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."*

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.

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.

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.

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.

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.

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.

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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.*

**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.*

**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.*

**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.*

**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.*

**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.*

**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.*

**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.*

#### 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 the application of any interested person, or if the court deems it necessary, the court 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.

**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.

**Sec. 729. INVENTORY AND APPRAISEMENT.** (a) Not later than the 90th 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 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 appraisal 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 appraisal 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 appraisal of the estate referred to in this chapter.

(e) The court for good cause shown may require the filing of the inventory and appraisal at a time not later than the 90th day after the date of qualification of the guardian.

**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.

**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.

**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.

**Sec. 733. COURT ACTION.** (a) On return of the inventory, appraisal, and list of claims, the judge shall examine and approve or disapprove the inventory, appraisal, or list of claims as follows:

(1) if the judge approves the inventory, appraisalment, and list of claims, the judge shall issue an order to that effect; and

(2) if the judge does not approve the inventory, appraisalment, or list of claims, the judge shall enter an order to that effect.

(b) The court order shall require the return of another inventory, appraisalment, 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.

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 appraisalment 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 appraisalment required under Section 729 of this code.

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.

Sec. 736. **CORRECTION WHEN INVENTORY, APPRAISEMENT, OR LIST OF CLAIMS ERRONEOUS OR UNJUST.** A person interested in an estate who deems an inventory, appraisalment, 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, appraisalment, 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 appraisalment correcting the erroneous or unjust items and requires the return of the new appraisalment 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.

Sec. 737. **EFFECT OF REAPPRAISEMENT.** When a reappraisalment is made, returned, and approved by the court, the reappraisalment stands in place of the original appraisalment. Not more than one reappraisalment shall be made, but any person interested in the estate may object to the reappraisalment before or after the reappraisalment is approved. If the court finds that the reappraisalment is erroneous or unjust, the court shall appraise the property on the basis of the evidence before the court.

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 appraisalment 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, appraisalment, 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.

*Sec. 739. USE OF INVENTORIES, APPRAISEMENTS, AND LISTS OF CLAIMS AS EVIDENCE. All inventories, appraisements, and lists of claims that have been taken, returned, and approved in accordance with the law, or the record of an inventory, appraisement, 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, appraisement, 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 appraisement and list of claims.*

#### 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.

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 administration and those claims that are in suit or on which suit may yet be instituted.*

**Sec. 743. REPORTS OF GUARDIANS OF THE PERSON.** (a) *The guardian of the person, when there is a separate guardian of the estate, shall at the expiration of 12 months from the date of the guardian's qualification and receipt of letters, and annually thereafter, return to the court the guardian's sworn account 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; and

(14) any additional information the guardian desires to share with the court regarding the ward.

(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.

Sec. 744. **PENALTY FOR FAILURE TO FILE ACCOUNTINGS, EXHIBITS, OR REPORTS.** If a guardian fails to file any accounting, exhibit, or 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 exhibit or report; and, on hearing, the court may order the guardian to file the exhibit or report, and, unless good cause is shown for the failure to file the exhibit or report, the court may revoke the letters of the guardian and may fine the guardian an amount not to exceed \$1,000.

### SUBPART C. FINAL SETTLEMENT, ACCOUNTING, AND DISCHARGE

Sec. 745. **CLOSING GUARDIANSHIPS OF THE ESTATE.** (a) A guardianship of the estate of a ward is settled and closed 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 \$25,000 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 885 of this code.

(d) *In the settlement and closing 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.*

**Sec. 746. PAYMENT OF FUNERAL EXPENSES AND OTHER DEBTS.** *Notwithstanding Section 745 of this code, 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.*

**Sec. 747. TERMINATION OF GUARDIANSHIP OF THE PERSON.** (a) *When the guardianship of an incapacitated person is settled and closed 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 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.*

**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.*

**Sec. 749. ACCOUNT FOR FINAL SETTLEMENT OF ESTATES OF WARDS.** *When a guardianship of the estate is settled and closed, 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; and*
- (5) *other facts as appear necessary to a full and definite understanding of the exact condition of the guardianship.*

**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.

**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.

**Sec. 752. COURT ACTION.** (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.

**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.

**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.

**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.*

**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.*

**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.*

**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.*

#### SUBPART D. REVOCATION OF LETTERS, DEATH, RESIGNATION, AND REMOVAL

**Sec. 759. APPOINTMENT OF SUCCESSOR GUARDIAN.** (a) *In case of death, a personal representative of the deceased person 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.

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.*

**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 90 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 the guardian's whereabouts are unknown, or because the guardian is eluding service;*

*(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; or*

*(7) has cruelly treated a ward, or 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) as guardian of the person, the guardian cruelly treats the ward, or 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; or*

*(8) the guardian fails to comply with the requirements of Section 697 of this code.*

*(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.*

**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 or decedent, 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, the decedent's estate, or the ward's estate, and, if applicable, to 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.

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.

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.

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 90 days after the date of qualification, 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.

#### SUBPART E. GENERAL DUTIES AND POWERS OF GUARDIANS

Sec. 767. **POWERS AND DUTIES OF GUARDIANS OF THE PERSON.** The guardian of the person is entitled to the charge and control 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 of care, control, and protection of the ward;
- (3) the duty to provide the ward with clothing, food, medical care, and shelter; and
- (4) the power to consent to medical, psychiatric, and surgical treatment other than the in-patient psychiatric commitment of the ward.

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. The guardian of the estate shall account for all rents, profits, and revenues that the estate would have produced by such prudent management.

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.

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 apply for services under Section 593.027 or 593.028, Health and Safety Code, or 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.

(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.

#### 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.

Sec. 772. **COLLECTION OF CLAIMS AND RECOVERY OF PROPERTY.** (a) 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.

(b) Except as provided by Subsection (c) 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.

(c) 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.

(d) In approving a contract or conveyance under Subsection (b) or (c) 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.

(e) 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.

**Sec. 773. SUIT BY GUARDIAN.** A guardian 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.

**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 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; and
- (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.

(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.

**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.

**Sec. 776. SUMS ALLOWABLE FOR EDUCATION AND MAINTENANCE OF WARD.**

(a) Subject to Section 777 of this code, the court may direct the guardian of the person to expend, for the education and maintenance of the guardian's ward, a sum in excess of the income of the ward's estate. Otherwise, the guardian may not be allowed, for the education and maintenance of the ward, more than the net income of the estate. When different persons have the guardianship of the person and estate of a ward, the guardian of the estate shall pay to the guardian of the person a sum that is set by the court, 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 sum 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 corpus of the estate of the ward of the guardian for support and maintenance for the ward under this section, and when it is not convenient or possible for the guardian to first secure court approval, if the proof is clear and convincing that the expenditures were reasonable and proper, and are expenditures that the court would have granted authority to make the expenditures out of the corpus, and the ward received the benefits of the expenditures, the court may approve the expenditures in the same manner as if the expenditures were made by the guardian out of the income from the ward's estate. An expenditure under this subsection may not exceed \$5,000 per ward during an annual accounting period, unless the expenditure is made to a nursing home in which case the court may ratify any amount.

**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.

**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.

**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.

**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.

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.*

(b) *When it is necessary to borrow money for any of the purposes authorized under Subsection (a) 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.*

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 agency has the power to administer only the funds received from the governmental agency, 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 or agency 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.*



## 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 decedent 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.*

**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.*

**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.*

**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.*

(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.*

**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.*

Sec. 788. **CLAIMS MUST BE AUTHENTICATED.** Except as provided by this section, 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.

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.

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.

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.

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.

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 unmaturing 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.

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.

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.

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.

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.

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.

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.

*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.*

*Sec. 801. PRESENTMENT OF CLAIMS A PREREQUISITE FOR JUDGMENT. 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.*

*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.*

*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.*

*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.*

*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:*

- (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) 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.*

*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.

**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.

**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.

**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.

#### 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.

**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 Section 113.056 or Subchapter F, Chapter 113, Property Code.

**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.

**Sec. 814. SPECIAL PROVISIONS PERTAINING TO LIVESTOCK.** *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. 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. 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 his usual and customary charges, not to exceed three 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.*

**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.*

**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.*

**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.*

**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.

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.

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.

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.

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.

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.

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.

**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.*

**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.*

**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.*



*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.*

*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.*

*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.*

*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) After issuing the notice required by this subsection, 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. The guardian shall give notice by certified mail, return receipt requested, unless the court requires another form of notice, to each distributee of a deceased person's estate and to each creditor whose claim remains unsettled after presenting a claim within six months of the original grant of letters. 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 additional notice or it may allow for the waiver of the notice required 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.

**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.

**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.

**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.

**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.

*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.

*Sec. 837. PENALTY FOR NEGLIGENCE.* 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.

### 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.

*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.

*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.

*Sec. 842. PROCEDURE IN CASE OF NEGLIGENCE 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.

*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.

*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.

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.

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.

#### 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.

(l) 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.

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.

*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.

**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.

**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.

**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.

#### 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.*

#### SUBPART L. INVESTMENTS AND LOANS OF ESTATES OF WARDS

**Sec. 855. INVESTMENTS WITHOUT COURT ORDER.** (a) *The guardian of the estate may retain, without regard to diversification of investments and without liability for any depreciation or loss resulting from the retention, any property received into a guardianship estate at its inception or added to the estate by gift, devise, or inheritance or by mutation or increase. A guardian of the estate is not relieved from the 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.*

(b) *If the guardian of the estate has on hand money that belongs to the ward that exceeds that amount of money that may be necessary for the education and maintenance of the ward, the guardian shall invest the money as follows:*

- (1) *in bonds or other obligations of the United States;*
- (2) *in tax-supported bonds of this state;*
- (3) *except as limited by Subsections (c) and (d) of this section, in tax-supported bonds of a county, district, political subdivision, or incorporated city or town in this state;*
- (4) *in shares or share accounts of a building and loan association organized under the laws of this state if the payment of the shares or share accounts is insured by the Federal Savings and Loan Insurance Corporation;*
- (5) *in the shares or share accounts of a federal savings and loan association domiciled in this state if the payment of the shares or share accounts is insured by the Federal Savings and Loan Insurance Corporation;*
- (6) *in 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) *in 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.*

**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 in or sell any property or security in which a trustee is authorized to invest by either Section 113.056 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) *On the hearing of the application filed under this section, the court shall enter an order authorizing the investment or sale if the court is satisfied that the investment or sale will be beneficial to the ward. The court order must specify the investment or sale to be made and contain other directions as the court finds advisable.*

(c) *The procedure specified in this section does not need to be followed in making an investment or sale specifically authorized by other statutes and does not apply if a different procedure is prescribed for an investment or sale by a guardian.*

**Sec. 857. 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.

Sec. 858. **LOANS AND SECURITY FOR LOANS.** If, at any time, the guardian of the estate has on hand money belonging to the ward in an amount that is beyond what may be necessary for the education and maintenance of the ward, the guardian may lend the money

for the highest rate of interest that can be obtained for the money. 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.

Sec. 859. **GUARDIAN'S LIABILITY FOR LOANS.** When the borrower of money lent by the guardian of the estate under the court's direction and on security approved by the court is unable to repay the money or the security fails, the guardian of the estate is not personally responsible for the money unless the guardian has been guilty of fraud or negligence with respect to the loan or the collection of the loan, in which case the guardian and the sureties on the bond of the guardian shall be liable for whatever loss the ward sustains because of the guardian's fraud or negligence.

Sec. 860. **GUARDIAN'S INVESTMENTS IN REAL ESTATE.** (a) When the guardian of the estate of a ward thinks it is best for the ward who has a surplus of money on hand to invest the money in real estate, the guardian shall file a written application in the court in which the guardianship is pending 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.

(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.

Sec. 861. **OPINION OF ATTORNEY WITH RESPECT TO LOANS AND INVESTMENTS.** When the guardian of the estate of a ward lends or invests the money of the ward, the guardian may not pay over or transfer any money in consummation of the loan or investment until the guardian has submitted to a reputable attorney for examination all bonds, notes, mortgages, documents, abstracts, and other papers pertaining to the loan or investment and the guardian has received a written opinion from the attorney that all papers pertaining to the loan or investment are regular and that the title to the bonds, notes, or real estate is good. The attorney making the examination shall be paid a reasonable fee, not to exceed one percent of the amount invested, unless one percent of the amount invested is less than \$25, in which event the fee shall be \$25. The guardian shall pay the fee out of the funds of the ward's estate. On a loan, 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.

Sec. 862. **REPORT OF INVESTMENT AND LOANS.** Not later than the 30th day after the date money belonging to a ward's estate is lent or invested, the guardian of the ward's estate shall report to the court in writing, verified by affidavit, stating fully the facts of the investment or loan, unless the investment or loan was made pursuant to a court order.

Sec. 863. **LIABILITY OF GUARDIAN FOR FAILURE TO LEND OR INVEST FUNDS.** If the guardian of the estate neglects to invest or lend surplus money on hand at interest when the guardian can do so by using reasonable diligence, the guardian shall be

liable for the principal and for the highest legal rate of interest on the principal for the time the guardian neglects to invest or lend the surplus money. The amount of principal and interest on the principal may be recovered in a court of competent jurisdiction.

**Sec. 864. REQUIRING GUARDIAN TO INVEST OR LEND SURPLUS FUNDS.** *If there is any surplus money of the estate in the hands of the guardian of the estate, the court, on its own motion or on written complaint filed by any person, may cause the guardian to be cited to appear and show cause why the surplus money should not be invested or lent at interest. On the hearing of a complaint filed under this section, the court shall enter an order as the law and the facts require.*

#### 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 notice to all interested persons and to other persons as directed by the court, 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 heirs at law who are identifiable at the time of the order;*

*(3) a devisee under the ward's last validly executed will, if there is a will; 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.*

**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.*

#### SUBPART N. MANAGEMENT TRUSTS

**Sec. 867. CREATION OF MANAGEMENT TRUST.** *On application by the guardian of a ward, the court in which the guardianship proceeding is pending 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. The order shall direct the guardian to deliver all or part of the assets of the guardianship to a trust company or a state or national bank that has trust powers in this state. The order shall include terms, conditions, and limitations placed on the trust.*

**Sec. 868. TERMS OF MANAGEMENT TRUST.** (a) *A trust created under Section 867 of this code must provide that:*

(1) *the ward 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;*

(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) *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 as the ward'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, as necessary and without the intervention of a guardian or other representative of the ward, to the ward's guardian or to a person who has physical custody of the ward for:*

(1) *the benefit, support, or maintenance of the ward if the ward is a minor; or*

(2) *the support of the ward, and the support, maintenance, and education of the ward's children if the ward is an incapacitated person other than a minor.*

**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 may not revoke the trust.*

**Sec. 870. TERMINATION OF TRUST.** (a) *If the ward is a minor, the trust terminates:*

(1) *on the death of the ward or the ward's 18th birthday, whichever is earlier; or*

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

(b) If the ward is an incapacitated person other than a minor, the trust terminates on the date the court determines that a guardianship is no longer necessary for the ward or on the death of the ward before the court's determination that a guardianship is no longer necessary.

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) 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.

Sec. 872. **LIABILITY.** The guardian 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.

Sec. 873. **DISTRIBUTION OF TRUST PROPERTY.** Unless otherwise provided by the court, the trustee shall distribute the principal or any undistributed income of the trust to the ward or to the representative of the deceased ward's estate when the trust terminates on its own terms or on the ward's death.

## PART 5. SPECIAL PROCEEDINGS AND ORDERS

### SUBPART A. TEMPORARY GUARDIANSHIPS

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) A person for whom a temporary guardian has been appointed may not be presumed to be incapacitated. The person retains all rights and powers that are not specifically granted to the person's temporary guardian by court order.

(c) A written application for the appointment of a temporary guardian may be filed before the court appoints a temporary guardian. The application must be filed not later than the end of the next business day of the court after the date of appointment of the 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;

(7) the social security numbers of the applicant and proposed ward; and

(8) if applicable, that the proposed temporary guardian is a private professional guardian who has complied with the requirements of Section 697 of this code.

(d) At the earliest of the filing of an application for temporary guardianship or the appointment of a temporary guardian, 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 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 the temporary guardian 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 extended 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) Every temporary guardianship granted before a hearing on the application required by Subdivision (1) of this subsection expires on its own terms at the conclusion of the hearing unless the respondent or the respondent's attorney consents that the order appointing the temporary guardian may be extended for a longer period not to exceed 60 days after the date of the filing of the application for temporary guardianship.

(3) Every temporary guardianship granted before a hearing on the application required by Subdivision (1) of this subsection shall be set 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 before a hearing on the application required by Subdivision (1) of this subsection must include 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 obtained a temporary guardianship before a hearing on the application required by Subdivision (1) of this subsection, the respondent or the respondent's attorney may appear and move for the dissolution or modification of the temporary guardianship. If a motion is made for dissolution or modification of the temporary guardianship, the court shall hear and determine the motion as expeditiously as the ends of justice require.

(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 powers and duties 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 669 of this code.

(j) The court may not customarily or ordinarily appoint the Texas Department of Human 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 or an application to convert a temporary guardianship to a permanent guardianship is challenged or contested, the court shall appoint a temporary guardian whose term expires at the conclusion of the hearing or the period provided by Subsection (h) of this section, whichever is later.

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.

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.

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.

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.

#### 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.

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.*

#### SUBPART C. INCAPACITATED SPOUSE AND COMMUNITY PROPERTY

*Sec. 883. INCAPACITATED SPOUSE. When a husband or wife is judicially declared to be incapacitated, 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, 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. If the court finds that it is in the best interest of the incapacitated spouse and that the other spouse would not be disqualified to serve as guardian under Section 681 of this code, guardianship of the estate of the incapacitated spouse may not be necessary when the other spouse is not incapacitated unless the incapacitated spouse owns separate property, and the guardianship will be of the separate property only. The qualification of a guardian of the estate of an incapacitated spouse does not deprive the competent spouse of the right to manage, control, and dispose of the entire community estate as provided in this chapter.*

*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.*

#### 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.

#### 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 \$25,000 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 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 \$25,000 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.

#### SUBPART F. SALE OF PROPERTY OF MINOR

Sec. 889. **SALE OF PROPERTY OF A MINOR BY A PARENT WITHOUT GUARDIANSHIP.** (a) When the value of the minor's interest in real or personal property in an estate does not exceed \$25,000, a natural or adoptive parent of a minor who is not a ward may apply to the court for an order to sell the real or personal property of a minor in an estate 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 885 of this code.

### SUBPART G. NONRESIDENT GUARDIANS

Sec. 891. **NONRESIDENT GUARDIAN'S REMOVAL OF WARD'S PROPERTY FROM STATE.** A nonresident guardian, whether or not 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.

Sec. 892. **DELIVERY OF PROPERTY.** A resident executor, administrator, or 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 nonresident guardian of the ward.

SECTION 2. Section 2(e), Texas Probate Code, is amended to read as follows:

(e) Nature of Proceeding. The administration of the estate of a decedent [or ward], from the filing of the application for probate and administration, or for administration, until the decree of final distribution and the discharge of the last personal representative, shall be considered as one proceeding for purposes of jurisdiction. The entire proceeding is a proceeding in rem.

SECTION 3. Section 3, Texas Probate Code, is amended to read as follows:

Sec. 3. **DEFINITIONS AND USE OF TERMS.** Except as otherwise provided by Chapter XIII of this Code, when [When] used in this Code, unless otherwise apparent from the context:

(a) "Authorized corporate surety" means a domestic or foreign corporation authorized to do business in the State of Texas for the purpose of issuing surety, guaranty or indemnity bonds guaranteeing the fidelity of executors and[,] administrators[,] and guardians.

(b) "Child" includes an adopted child, whether adopted by any existing or former statutory procedure or by acts of estoppel, but, unless expressly so stated herein, does not include a child who has no presumed father.

(c) "Claims" include liabilities of a decedent which survive, including taxes, whether arising in contract or in tort or otherwise, funeral expenses, the expense of a tombstone, expenses of administration, estate and inheritance taxes, [~~liabilities against the estate of a minor or incompetent,~~] and debts due such estates.

(d) "Corporate fiduciary" means a trust company or bank having trust powers, existing or doing business under the laws of this state or of the United States, which is authorized by law to act under the order or appointment of any court of record, without giving bond, as [guardian] receiver, trustee, executor, administrator, or, although without general depository powers, depository for any moneys paid into court, or to become sole guarantor or surety in or upon any bond required to be given under the laws of this state.

(e) “County Court” and “Probate Court” are synonymous terms and denote county courts in the exercise of their probate jurisdiction, courts created by statute and authorized to exercise original probate jurisdiction, and district courts exercising probate jurisdiction in contested matters.

(f) “County Judge,” “Probate Judge,” and “Judge” denote the presiding judge of any court having original jurisdiction over probate proceedings, whether it be a county court in the exercise of its probate jurisdiction, a court created by statute and authorized to exercise probate jurisdiction, or a district court exercising probate jurisdiction in contested matters.

(g) “Court” denotes and includes both 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.

(h) “Devise,” when used as a noun, includes a testamentary disposition of real or personal property, or of both. When used as a verb, “devise” means to dispose of real or personal property, or of both, by will.

(i) “Devisee” includes legatee.

(j) “Distributee” denotes a person entitled to the estate of a decedent under a lawful will, or under the statutes of descent and distribution.

(k) “Docket” means the probate docket.

(l) “Estate” denotes the real and personal property of a decedent [~~or ward~~], both as such property originally existed and as from time to time changed in form by sale, reinvestment, or otherwise, and as augmented by any accretions and additions thereto (including any property to be distributed to the representative of the decedent by the trustee of a trust which terminates upon the decedent’s death) and substitutions therefor, and as diminished by any decreases therein and distributions therefrom.

(m) “Exempt property” refers to that property of a decedent’s estate which is exempt from execution or forced sale by the Constitution or laws of this State, and to the allowance in lieu thereof.

(n) “Habitual drunkard” and “common drunkard” are synonymous and denote one who, by reason of the habitual use of intoxicating liquor, drugs, or a toxic inhalant as defined by Section 462.001, Health and Safety Code, is incapable of taking care of himself or managing his property and financial affairs.

(o) “Heirs” denote those persons, including the surviving spouse, who are entitled under the statutes of descent and distribution to the estate of a decedent who dies intestate.

(p) “Incompetents” or “Incompetent persons” are persons non compos mentis, mentally disabled persons, insane persons, common or habitual drunkards, and other persons who are mentally incompetent to care for themselves or to manage their property and financial affairs.

(q) “Independent executor” means the personal representative of an estate under independent administration as provided in Section 145 of this Code. The term “independent executor” includes the term “independent administrator.”

(r) “Interested persons” or “persons interested” means heirs, devisees, spouses, creditors, or any others having a property right in, or claim against, the estate being administered; and anyone interested in the welfare of a minor or incompetent ward.

(s) “Legacy” includes any gift or devise by will, whether of personalty or realty. “Legatee” includes any person entitled to a legacy under a will.

(t) “Minors” are all persons under eighteen years of age who have never been married or who have not had disabilities of minority removed for general purposes.

(u) “Minutes” means the probate minutes.

(v) “Mortgage” or “Lien” includes 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 Federal or State tax liens.

(w) “Net estate” means the real and personal property of a decedent, exclusive of homestead rights, exempt property, the family allowance and enforceable claims against the estate.

(x) "Person" includes natural persons and corporations.

(y) "Persons of unsound mind" are persons non compos mentis, mentally disabled persons, insane persons, and other persons who are mentally incompetent to care for themselves or to manage their property and financial affairs.

(z) "Personal property" includes interests in goods, money, choses in action, evidence of debts, and chattels real.

(aa) "Personal representative" or "Representative" includes executor, independent executor, administrator, independent administrator, temporary administrator, ~~guardian, and temporary guardian,~~ together with their successors. The inclusion of independent executors herein shall not be held to subject such representatives to control of the courts in probate matters with respect to settlement of estates except as expressly provided by law.

(bb) "Probate matter," "Probate proceedings," "Proceeding in probate," and "Proceedings for probate" are synonymous and include a matter or proceeding relating to ~~guardianship, as well as a matter or proceeding relating to~~ the estate of a decedent~~, and proceedings regarding incompetents~~.

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

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

(ee) "Surety" includes both personal and corporate sureties.

(ff) "Will" includes codicil; it also includes a testamentary instrument which merely:

- (1) appoints an executor or guardian;
- (2) directs how property may not be disposed of; or
- (3) revokes another will.

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

(hh) The masculine gender includes the feminine and neuter.

(ii) "Statutory probate court" refers to any statutory court presently in existence or created after the passage of this Act, the jurisdiction of which is limited by statute to the general jurisdiction of a probate court, and such courts whose statutorily designated name contains the word "probate." County courts at law exercising probate jurisdiction are not statutory probate courts under this Code unless their statutorily designated name includes the word "probate."

(jj) "Next of kin" includes an adopted child or his or her descendants and the adoptive parent of the adopted child.

(kk) "Charitable organization" means:

(1) a nonprofit corporation, trust, community chest, fund, foundation, or other entity that is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 because the entity is organized and operated exclusively for religious, charitable, scientific, educational, or literary purposes, testing for public safety, prevention of cruelty to children or animals, or promotion of amateur sports competition; or

(2) any other entity or organization that is organized and operated exclusively for the purposes listed in Section 501(c)(3) of the Internal Revenue Code of 1986.

(ll) "Governmental agency of the state" means:

(1) an incorporated city or town, a county, a public school district, a special-purpose district or authority, or a district, county, or justice of the peace court;

(2) a board, commission, department, office, or other agency in the executive branch of state government, including an institution of higher education as defined by Section 61.003, Education Code;

(3) the legislature or a legislative agency; and

(4) the supreme court, the court of criminal appeals, a court of appeals, or the State Bar of Texas or another judicial agency having statewide jurisdiction.

SECTION 4. Section 4, Texas Probate Code, is amended to read as follows:



Sec. 4. JURISDICTION OF COUNTY COURT WITH RESPECT TO PROBATE PROCEEDINGS. The county court shall have the general jurisdiction of a probate court. It shall probate wills, [~~appoint guardians of minors and incompetents,~~] grant letters testamentary and of administration [~~and guardianship~~], settle accounts of personal representatives, and transact all business appertaining to estates subject to administration [~~or guardianship~~], including the settlement, partition, and distribution of such estates. [~~It may also appoint guardians for other persons where it is necessary that a guardian be appointed to receive funds from any governmental source or agency.~~]

SECTION 5. Sections 5(a), (b), (c), and (e), Texas Probate Code, are amended to read as follows:

(a) The district court shall have original control and jurisdiction over executors *and*[,] administrators[~~, guardians and wards~~] under such regulations as may be prescribed by law.

(b) In those counties where 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 probate *and*[,] administrations[~~, guardianships, limited guardianships, and mental illness matters~~] shall be filed and heard in the county court, except that in contested probate matters, the judge of the county court may on his own motion (or shall on the motion of any party to the proceeding, according to the motion) request as provided by Section 25.0022, Government Code, the assignment of a statutory probate judge to hear the contested portion of the proceeding, or transfer the contested portion of the proceeding to the district court, which may then hear contested matter as if originally filed in district court. The county court shall continue to exercise jurisdiction over the management of the estate with the exception of the contested matter until final disposition of the contested matter is made by the assigned judge or the district court. In contested matters transferred to the district court in those counties, the district court, concurrently with the county court, shall have the general jurisdiction of a probate court. Upon resolution of all pending contested matters, the contested portion of the probate proceeding shall be transferred by the district court to the county court for further proceedings not inconsistent with the orders of the district court. If a contested portion of the proceeding is transferred to a district court under this subsection, 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 where there is a statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court, all applications, petitions and motions regarding probate *and*[,] administrations[~~, guardianships, limited guardianships, and mental illness matters~~] shall be filed and heard in such courts and the constitutional county court, rather than in the district courts, unless otherwise provided by the legislature, and the judges of such courts may hear any of such matters sitting for the judge of any of such courts. In contested probate matters, the judge of the constitutional county court may on his own motion, and shall on the motion of any party to the proceeding, transfer the proceeding to the statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court, which may then hear the proceeding as if originally filed in such court.

(e) All courts exercising original probate jurisdiction shall have the power to hear all matters incident to an estate. When a surety is called on to perform in place of an administrator [~~or guardian~~], all courts exercising original probate jurisdiction may award judgment against the personal representative in favor of his surety in the same suit.

SECTION 6. Sections 5A(a) and (b), Texas Probate Code, are amended to read as follows:

(a) In proceedings in the constitutional county courts and statutory county courts at law, the phrases "appertaining to estates" and "incident to an estate" in this Code include the probate of wills, the issuance of letters testamentary and of administration, the determination of heirship, and also include, but are not limited to, all claims by or against an estate, all actions for trial of title to land incident to an estate and for the enforcement of liens thereon incident to an estate, all actions for trial of the right of property incident to an estate, and actions to construe wills, and generally all matters relating to the settlement, partition, and distribution of estates of [~~wards and~~] deceased persons.

(b) In proceedings in the statutory probate courts and district courts, the phrases "appertaining to estates" and "incident to an estate" in this Code include the probate of wills, the issuance of letters testamentary and of administration, and the determination of heirship, and also include, but are not limited to, all claims by or against an estate, all actions for trial of title to land and for the enforcement of liens thereon, all actions for trial of the right of property, all actions to construe wills, the interpretation and administration of testamentary trusts and the applying of constructive trusts, and generally all matters relating to the settlement, partition, and distribution of estates of ~~wards and~~ deceased persons. All statutory probate courts may, in the exercise of their jurisdiction, notwithstanding any other provisions of this Code, hear all suits, actions, and applications filed against or on behalf of any ~~guardianship,~~ heirship proceeding~~[,]~~ or decedent's estate, including estates administered by an independent executor. This subsection shall be construed in conjunction with and in harmony with Section 145 and all other sections of this Code dealing with independent executors, but shall not be construed so as to increase permissible judicial control over independent executors. All statutory probate courts shall have the same powers over independent executors that are exercisable by the district courts. In situations where the jurisdiction of a statutory probate court is concurrent with that of a district court, any cause of action appertaining to estates or incident to an estate shall be brought in a statutory probate court rather than in the district court.

SECTION 7. Section 12(c), Texas Probate Code, is amended to read as follows:

(c) Suit for Fiduciary. No security for costs shall be required of an executor ~~or,~~ administrator~~[,] or guardian~~ appointed by a court of this state in any suit brought by him in his fiduciary character.

SECTION 8. Section 13, Texas Probate Code, is amended to read as follows:

Sec. 13. JUDGE'S PROBATE DOCKET. The county clerk shall keep a record book to be styled "Judge's Probate Docket," and shall enter therein:

(a) The name of each person upon whose person or estate proceedings are had or sought to be had.

(b) The name of the executor or administrator ~~[or guardian of such estate or person,]~~ or of the applicant for letters.

(c) The date of the filing of the original application for probate proceedings.

(d) A minute of each order, judgment, decree, and proceeding had in each estate, with the date thereof.

(e) A number for each estate upon the docket in the order in which proceedings are commenced, and each paper filed in an estate shall be given the corresponding docket number of the estate.

SECTION 9. Section 14, Texas Probate Code, is amended to read as follows:

Sec. 14. CLAIM DOCKET. The county clerk shall also keep a record book to be styled "Claim Docket," and shall enter therein all claims presented against an estate for approval by the court. This docket shall be ruled in sixteen 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 estate. 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 executor or administrator ~~[or 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 such judgment.

SECTION 10. Section 15, Texas Probate Code, is amended to read as follows:

Sec. 15. PROBATE MINUTES AND PAPERS TO BE RECORDED THEREIN. The county clerk shall keep a record book styled "Probate Minutes," and shall enter therein in full all orders, judgments, decrees, and proceedings of the court, together with the following:

(a) All applications for the probate of wills and for the granting of administration ~~[or guardianship]~~.

- (b) All citations and notices, whether published or posted, with the returns thereon.
- (c) All wills and the testimony upon which the same are admitted to probate, provided that the substance only of depositions shall be recorded.
- (d) All bonds and official oaths.
- (e) All inventories, appraisements, and lists of claims.
- (f) All exhibits and accounts.
- (g) All reports of hiring, renting, or sale.
- (h) All applications for sale or partition of real estate and reports of sale and of commissioners of partition.
- (i) All 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.
- (j) All reports of lending or investing money.

SECTION 11. Section 19, Texas Probate Code, is amended to read as follows:

Sec. 19. CALL OF THE DOCKETS. The judge of the court in which probate proceedings are pending, at such times as he shall determine, shall call the estates of decedents[, minors and incompetents] in their regular order upon both the probate and claim dockets and make such orders as shall be necessary.

SECTION 12. Section 24, Texas Probate Code, is amended to read as follows:

Sec. 24. ENFORCEMENT OF ORDERS. The county or probate judge may enforce obedience to all his lawful orders against executors *and*[,] administrators [*and guardians*] by attachment and imprisonment, but no such imprisonment shall exceed three days for any one offense, unless otherwise expressly so provided in this Code.

SECTION 13. Section 26, Texas Probate Code, is amended to read as follows:

Sec. 26. ATTACHMENTS FOR PROPERTY. Whenever complaint in writing, under oath, shall be made to the county or probate judge by any person interested in the estate of a decedent[, *minor or incompetent*] that the executor or administrator [*or guardian*] is about to remove said estate, or any part thereof, beyond the limits of the State, such judge may order a writ to issue, directed "to any sheriff or any constable within the State of Texas," commanding him to seize such estate, or any part thereof, and hold the same subject to such further orders as such judge shall make on such complaint. No such writ shall issue unless the complainant shall give bond, in such sum as the judge shall require, payable to the executor or administrator [*or guardian*] of such estate, conditioned for the payment of all damages and costs that shall be recovered for the wrongful suing out of such writ. Provided, however, that no writ of attachment directed to the sheriff or any constable of a specific county within this State shall be held defective if such writ was properly executed within such county by such officer.

SECTION 14. Section 28, Texas Probate Code, is amended to read as follows:

Sec. 28. PERSONAL REPRESENTATIVE TO SERVE PENDING APPEAL OF APPOINTMENT. Pending appeals from orders or judgments appointing administrators [*or guardians*] or temporary administrators [*or guardians*], the appointees shall continue to act as such and shall continue the prosecution of any suits then pending in favor of the estate.

SECTION 15. Section 29, Texas Probate Code, is amended to read as follows:

Sec. 29. APPEAL BONDS OF PERSONAL REPRESENTATIVES. When an appeal is taken by an executor *or*[,] administrator[, *or guardian*], no bond shall be required, unless such appeal personally concerns him, in which case he must give the bond.

SECTION 16. Section 31, Texas Probate Code, is amended to read as follows:

Sec. 31. BILL OF REVIEW. Any person interested may, by a bill of review filed in the court in which the probate proceedings were had, have any decision, order, or judgment rendered by the court, or by the judge thereof, revised and corrected on showing error therein; but no process or action under such decision, order or judgment shall be stayed except by writ of injunction, and no bill of review shall be filed after two years have elapsed from the date of such decision, order, or judgment. [~~Persons non-compos mentis and minors~~]

shall have two years after the removal of their respective disabilities within which to apply for a bill of review.]

SECTION 17. Section 32, Texas Probate Code, is amended to read as follows:

Sec. 32. COMMON LAW APPLICABLE. The rights, powers and duties of executors ~~and[,] administrators[, and guardians]~~ shall be governed by the principles of the common law, when the same do not conflict with the provisions of the statutes of this State.

SECTION 18. Section 33(j), Texas Probate Code, is amended to read as follows:

(j) Request for Notice. At any time after an application is filed for the purpose of commencing any proceeding in probate, including, but not limited to, a proceeding for the probate of a will, grant of letters testamentary or of administration ~~and[,] determination of heirship, [and the grant of letters of guardianship,]~~ any person interested in the estate ~~[or welfare of a ward,]~~ may file with the clerk a request in writing that he be notified of any and all, or of any specifically designated, motions, applications, or pleadings filed by any person, or by any particular persons specifically designated in the request. The fees and costs for such notices shall be borne by the person requesting them; and the clerk may require a deposit to cover the estimated costs of furnishing such person with the notice or notices requested. The clerk shall thereafter send to such person by ordinary mail copies of any of the documents specified in the request. Failure of the clerk to comply with the request shall not invalidate any proceeding.

SECTION 19. Section 34A, Texas Probate Code, is amended to read as follows:

Sec. 34A. ~~[GUARDIANS AND]~~ ATTORNEYS AD LITEM. The judge of a probate court may appoint ~~[a guardian ad litem,]~~ an attorney ad litem~~[, or, if necessary, both,]~~ to represent the interests of a person having a legal disability, a nonresident, an unborn or unascertained person, or an unknown heir in any probate proceeding. Each ~~[guardian ad litem and]~~ attorney ad litem appointed under this section is entitled to reasonable compensation for services in the amount set by the court and to be taxed as costs in the proceeding.

SECTION 20. Section 35, Texas Probate Code, is amended to read as follows:

Sec. 35. WAIVER OF NOTICE. Any person legally competent who is interested in any hearing in a proceeding in probate may, in person or by attorney, waive in writing notice of such hearing. A ~~[guardian of the estate or a guardian ad litem may make such a waiver on behalf of his ward, and a]~~ trustee may make such a waiver on behalf of the beneficiary of his trust. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of any person residing in a foreign country, may make such waiver of notice on behalf of such person. Any person who submits to the jurisdiction of the court in any hearing shall be deemed to have waived notice thereof.

SECTION 21. Section 36, Texas Probate Code, is amended to read as follows:

Sec. 36. DUTY AND RESPONSIBILITY OF JUDGE. It shall be the duty of each county and probate court to use reasonable diligence to see that personal representatives of estates being administered under orders of the court~~[, guardians of the persons of wards,]~~ and other officers of the court~~[,]~~ perform the duty enjoined upon them by law pertaining to such estates ~~[and wards]~~. The judge shall annually, if in his opinion the same be necessary, examine the condition of each of said estates~~[, the well-being of each ward of the court,]~~ and the solvency of the bonds of personal representatives of ~~estates [estate and guardians of persons]~~. He shall, at any time he finds that the personal representative's bond is not sufficient to protect such estate ~~[or ward]~~, require such personal representatives to execute a new bond in accordance with law. In each case, he shall notify the personal representative, and the sureties on the bond, as provided by law; and should damage or loss result to estates ~~[or wards]~~ through the gross neglect of the judge to use reasonable diligence in the performance of his duty, he shall be liable on his bond to those damaged by such neglect.

SECTION 22. The heading to Chapter V, Texas Probate Code, is amended to read as follows:

CHAPTER V. PROBATE AND[, ] GRANT OF ADMINISTRATION[, ]  
AND GUARDIANSHIP]

SECTION 23. The heading to Chapter VI, Texas Probate Code, is amended to read as follows:

CHAPTER VI. SPECIAL TYPES OF ADMINISTRATION [AND GUARDIANSHIP]

SECTION 24. The heading to Part 1, Chapter VI, Texas Probate Code, is amended to read as follows:

PART 1. TEMPORARY ADMINISTRATION IN THE INTEREST  
OF [(A)] ESTATES OF DEPENDENTS[, AND (B) PERSONS  
OR ESTATES OF MINORS AND INCOMPETENTS]

SECTION 25. Section 133, Texas Probate Code, is amended to read as follows:

Sec. 133. POWERS OF TEMPORARY ADMINISTRATORS [APPOINTEES]. [(a) Temporary Administrators.] Temporary administrators shall have and exercise only such rights and powers as are specifically expressed in the order of the court appointing them, and as may be expressed in subsequent orders of the court. Where a court, by a subsequent order, extends the rights and powers of a temporary administrator, it may require additional bond commensurate with such extension. Any acts performed by temporary administrators that are not so expressly authorized shall be void.

[(b) Temporary Guardianships. All the provisions of this Code relating to the guardianship of persons and estates of minors, persons of unsound mind, and habitual drunkards shall apply to temporary guardianship of the persons and estates of such persons, in so far as the same are applicable.]

SECTION 26. The heading to Section 135, Texas Probate Code, is amended to read as follows:

Sec. 135. CLOSING TEMPORARY ADMINISTRATION [OR GUARDIANSHIP]

SECTION 27. The heading to Chapter VII, Texas Probate Code, is amended to read as follows:

CHAPTER VII. EXECUTORS AND[, ] ADMINISTRATORS[, AND GUARDIANS]

SECTION 28. Section 186, Texas Probate Code, is amended to read as follows:

Sec. 186. LETTERS OR CERTIFICATE MADE EVIDENCE. Letters testamentary or[, ] of administration[, or of guardianship,] or a certificate of the clerk of the court which granted the same, under the seal of such court, that said letters have been issued, shall be sufficient evidence of the appointment and qualification of the personal representative of an estate [or ward] and of the date of qualification.

SECTION 29. Section 189, Texas Probate Code, is amended to read as follows:

Sec. 189. HOW EXECUTORS AND[, ] ADMINISTRATORS[, AND GUARDIANS] SHALL QUALIFY. A personal representative shall be deemed to have duly qualified when he shall have taken and filed his oath and made the required bond, had the same approved by the judge, and filed it with the clerk. In case of an executor [or guardian] who is not required to make bond, he shall be deemed to have duly qualified when he shall have taken and filed his oath required by law.

SECTION 30. Section 192, Texas Probate Code, is amended to read as follows:

Sec. 192. TIME FOR TAKING OATH AND GIVING BOND. The oath of a personal representative may be taken and subscribed, or his bond may be given and approved, at any time before the expiration of twenty days after the date of the order granting letters testamentary or of administration [or of guardianship], as the case may be, or before such

letters shall have been revoked for a failure to qualify within the time allowed. All such oaths may be taken before any person authorized to administer oaths under the laws of this State.

SECTION 31. Section 194, Texas Probate Code, is amended to read as follows:

Sec. 194. BONDS OF PERSONAL REPRESENTATIVES OF ESTATES. Except when bond is not required under the provisions of this Code, before the issuance of letters testamentary[,] or of administration [~~or guardianship of estates~~], the recipient of letters shall enter into bond conditioned as required by law, payable to the county judge or probate judge of the county in which the probate proceedings are pending and to his successors in office. Such bonds shall bear the written approval of either of such judges in his official capacity, and shall be executed and approved in accordance with the following rules:

1. Court to Fix Penalty. The penalty of the bond shall be fixed by the judge, in an amount deemed sufficient to protect the estate and its creditors, as hereinafter provided.

2. Bond to Protect Creditors Only, When. If the person to whom letters testamentary or of administration is granted is also entitled to all of the decedent's estate, after payment of debts, the bond shall be in an amount sufficient to protect creditors only, notwithstanding the rules applicable generally to bonds of personal representatives of estates.

3. Before Fixing Penalty, Court to Hear Evidence. In any case where a bond is, or shall be, required of a personal representative of an estate, the court shall, before fixing the penalty of the bond, hear evidence and determine:

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

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

(c) The estimated value of certificates of stock, bonds, notes, or securities of the estate or ward, the name of the depository, if any, in which said assets are held for safekeeping, the face value of life insurance or other policies payable to the person on whose estate administration is sought, or to such estate, and such other personal property as is owned by the estate, or by one under disability; and

(d) The estimated amount of debts due and owing by the estate or ward.

4. Penalty of Bond. The penalty of the bond shall be fixed by the judge in an amount equal to the estimated value of all personal property belonging to the estate, or to the person under disability, together with an additional amount to cover revenue anticipated to be derived during the succeeding twelve (12) months from interest, dividends, collectible claims, the aggregate amount of any installments or periodical 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 order of court, or voluntarily made by the representative or by his sureties as hereinafter provided in Subdivisions 6 and 7 hereof.

5. Agreement as to Deposit of Assets. It shall be lawful, and the court may require such action when deemed in the best interest of an estate [~~or ward~~], for a personal representative to agree with the surety or sureties, either corporate or personal, for the deposit of any or all cash, and safekeeping of other assets of the estate in a domestic state or national bank, trust company, savings and loan association, or other domestic corporate depository, duly incorporated and qualified to act as such under the laws of this State or of the United States, if such deposit is otherwise proper, in such manner as to prevent the withdrawal of such moneys or other assets without the written consent of the surety, or an order of the court made on such notice to the surety as the court shall direct. No such agreement shall in any manner release from or change the liability of the principal or sureties as established by the terms of the bond.

6. Deposits Authorized or Required, When. Cash or securities or other personal assets of an estate [~~or ward~~] or which an estate [~~or ward~~] is entitled to receive may, and if deemed by the court in the best interest of such estate [~~or ward~~] shall, be deposited or placed in safekeeping as the case may be, in one or more of the depositories hereinabove described upon such terms as shall be prescribed by the court. The court in which the proceedings are pending, upon its own motion, or upon written application of the representative or of any other person interested in the estate [~~or ward~~] may authorize or require additional assets of the estate then on hand or as they accrue during the pendency of the probate proceedings to be deposited or held in safekeeping as provided above. The amount of the bond of the personal representative shall be reduced in proportion to the cash so deposited, or the value of the securities or other assets placed in safekeeping. Such cash so deposited, or securities or other assets held in safekeeping, or portions thereof, may be withdrawn from a depository only upon order of the court, and the bond of the personal representative shall be increased in proportion to the amount of cash or the value of securities or other assets so authorized to be withdrawn.

7. Representative May Deposit Cash or Securities of His Own in Lieu of Bond. It shall be lawful for the personal representative of an estate, in lieu of giving surety or sureties on any bond which shall be required of him, or for the purpose of reducing the amount of such bond, to deposit out of his own assets cash or securities acceptable to the court, with a depository such as named above or with any other corporate depository approved by the court, if such deposit is otherwise proper, said deposit to be equal in amount or value to the amount of the bond required, or the bond reduced by the value of assets so deposited.

8. Rules Applicable to Making and Handling Deposits in Lieu of Bond or to Reduce Penal Sum of Bond. (a) A receipt for a deposit in lieu of surety or sureties shall be issued by the depository, showing the amount of cash or, if securities, the amount and description thereof, and agreeing not to disburse or deliver the same except upon receipt of a certified copy of an order of the court in which the proceedings are pending, and such receipt shall be attached to the representative's bond and be delivered to and filed by the county clerk after approval by the judge.

(b) The amount of cash or securities on deposit may be increased or decreased, by order of the court from time to time, as the interest of the estate shall require.

(c) Deposits in lieu of sureties on bonds, whether of cash or securities, may be withdrawn or released only on order of a court having jurisdiction.

(d) Creditors shall have the same rights against the representative and such deposits as are provided for recovery against sureties on a bond.

(e) The court may on its own motion, or upon written application by the representative or by any other person interested in the estate, require that adequate bond be given by the representative in lieu of such deposit, or authorize withdrawal of the deposit and substitution of a bond with sureties therefor. In either case, the representative shall file a sworn statement showing the condition of the estate, and unless the same be filed within twenty (20) days after being personally served with notice of the filing of an application by another, or entry of the court's motion, he shall be subject to removal as in other cases. The deposit may not be released or withdrawn until the court has been satisfied as to the condition of the estate, has determined the amount of bond, and has received and approved the bond.

9. Withdrawal of Deposits When Estate Closed. Upon the closing of an estate, any such deposit or portion thereof remaining on hand, whether of the assets of the representative, or of the assets of the estate, or of the surety, shall be released by order of court and paid over to the person or persons entitled thereto. No writ of attachment or garnishment shall lie against the deposit, except as to claims of creditors of the estate being administered, or persons interested therein, including distributees and wards, and then only in the event distribution has been ordered by the court, and to the extent only of such distribution as shall have been ordered.

10. Who May Act as Sureties. The surety or sureties on said bonds may be authorized corporate sureties, or personal sureties.

11. Procedure When Bond Exceeds Fifty Thousand Dollars (\$50,000). When any such bond shall exceed Fifty Thousand Dollars (\$50,000) in penal sum, the court may require that such bond be signed by two (2) or more authorized corporate sureties, or by one such surety and two (2) or more good and sufficient personal sureties. The estate shall pay the cost of a bond with corporate sureties.

12. Qualifications of Personal Sureties. If the sureties be natural persons, there shall not be less than two (2), each of whom shall make affidavit in the manner prescribed in this Code, and the judge shall be satisfied that he owns property within this State, over and above that exempt by law, sufficient to qualify as a surety as required by law. Except as provided by law, only one surety is required if the surety is an authorized corporate surety; provided, a personal surety, instead of making affidavit, or creating a lien on specific real estate when such is required, may, in the same manner as a personal representative, deposit his own cash or securities, in lieu of pledging real property as security, subject, so far as applicable, to the provisions covering such deposits when made by personal representatives.

13. Bonds of Temporary Appointees. In case of a temporary administrator [~~or guardian~~], the bond shall be in such sum as the judge shall direct.

14. [~~Only One Bond for Guardian of Person and Estate. Where one person is appointed guardian of both the person and estate of a ward, only one bond shall be given by the guardian, in the same amount that would be required from a guardian of the estate only.~~]

[15.] Increased or Additional Bonds When Property Sold, Rented, Leased for Mineral Development, or Money Borrowed or Invested. The provisions in this Section with respect to deposit of cash and safekeeping of securities shall cover, so far as they may be applicable, the orders to be entered by the court when real or personal property of an estate has been authorized to be sold or rented, or money borrowed thereon, or when real property, or an interest therein, has been authorized to be leased for mineral development or subjected to unitization, the general bond having been found insufficient[, ~~or when money is borrowed or invested on behalf of a ward~~].

SECTION 32. Section 196, Texas Probate Code, is amended to read as follows:

Sec. 196. FORM OF BOND. The following form, or the same in substance, may be used for the bonds of personal representatives:

"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 unto the county (or probate) judge of the County of \_\_\_\_\_, and his successors in office, in the sum of \_\_\_\_\_ Dollars; conditioned that the above bound A. B., who has been appointed executor of the last will and testament of J. C., deceased (or has been appointed by the said judge of \_\_\_\_\_ County, administrator with the will annexed of the estate of J. C., deceased, or has been appointed by the said judge of \_\_\_\_\_ County, administrator of the estate of J. C., deceased, or has been appointed by the said judge of \_\_\_\_\_ County, temporary administrator of the estate of J. C., deceased, as the case may be[, or has been appointed by the judge of said county as guardian or temporary guardian of the estate, or of the person or person and estate of \_\_\_\_\_, stating in each case whether or not such person is a minor or a person of unsound mind or an habitual drunkard or a person for whom a guardian is necessary to receive funds or money from a governmental source]), shall well and truly perform all of the duties required of him by law under said appointment."

SECTION 33. Section 200, Texas Probate Code, is amended to read as follows:

Sec. 200. BOND OF MARRIED PERSON UNDER EIGHTEEN YEARS OF AGE. When a person under eighteen years of age who is or has been married shall accept and qualify as executor ~~or~~[,] administrator, [~~or guardian~~], any bond required to be executed by him shall be as valid and binding for all purposes as if he were of lawful age.

SECTION 34. Sections 214, 215, 216, and 217, Texas Probate Code, are amended to read as follows:



Sec. 214. EXECUTOR ~~[OR GUARDIAN]~~ WITHOUT BOND REQUIRED TO GIVE BOND. Where no bond is required of an executor ~~[or guardian]~~ appointed by will, any person having a debt, claim, or demand against the estate, to the justice of which oath has been made by himself, his agent, or attorney, or any other person interested in such estate, whether in person or as the representative of another, may file a complaint in writing in the court where such will is probated, and the court shall thereupon cite such executor ~~[or guardian]~~ to appear and show cause why he should not be required to give bond.

Sec. 215. ORDER REQUIRING BOND. Upon hearing such complaint, if it appears to the court that such executor ~~[or guardian]~~ is wasting, mismanaging, or misapplying such estate, and that thereby a creditor may probably lose his debt, or that thereby some person's interest in the estate may be diminished or lost, the court shall enter an order requiring such executor ~~[or guardian]~~ to give bond within ten days from the date of such order.

Sec. 216. BOND IN SUCH CASE. Such bond shall be for an amount sufficient to protect the estate and its creditors, to be approved by, and payable to, the judge, conditioned that said executor ~~[or guardian]~~ will well and truly administer such estate, and that he will not waste, mismanage, or misapply the same.

Sec. 217. FAILURE TO GIVE BOND. Should the executor ~~[or guardian]~~ fail to give such bond within ten days after the order requiring him to do so, then if the judge does not extend the time, he shall, without citation, remove such executor ~~[or guardian]~~ and appoint some competent person in his stead who shall administer the estate according to the provisions of such will or the law, and who, before he enters upon the administration of said estate, shall take the oath required of an administrator with the will annexed ~~[or of a guardian as the case may be]~~, and shall give bond in the same manner and in the same amount provided in this Code for the issuance of original letters of administration ~~[or guardianship]~~.

SECTION 35. Sections 220(c), (d), and (g), Texas Probate Code, are amended to read as follows:

(c) When Named Executor ~~[or Guardian]~~ Becomes an Adult. If one named in a will as executor ~~[or guardian]~~ is not an adult when the will is probated and letters in any capacity have been granted to another, such nominated executor ~~[or guardian]~~, upon proof that he has become an adult and is not otherwise disqualified, shall be entitled to have such former letters revoked and appropriate letters granted to him. And if the will names two or more persons as executor, any one or more of whom are minors when such will is probated, and letters have been issued to such only as are adults, said minor or minors, upon becoming adults, if not otherwise disqualified, shall be permitted to qualify and receive letters.

(d) Upon Return of Sick or Absent Executor ~~[or Guardian]~~. If one named in a will as executor ~~[or guardian]~~ was sick or absent from the State when the testator died, or when the will was proved, and therefore could not present the will for probate within thirty days after the testator's death, or accept and qualify as executor ~~[or guardian]~~ within twenty days after the probate of the will, he may accept and qualify as executor ~~[or guardian]~~ within sixty days after his return or recovery from sickness, upon proof to the court that he was absent or ill; and, if the letters have been issued to others, they shall be revoked.

(g) Payment or Tender of Money Due During Vacancy. Money or other thing of value falling due to an estate ~~[or ward]~~ while the office of the personal representative is vacant may be paid, delivered, or tendered to the clerk of the court for credit of the estate ~~[or ward]~~, and the debtor, obligor, or payor shall thereby be discharged of the obligation for all purposes to the extent and purpose of such payment or tender. If the clerk accepts such payment or tender, he shall issue a proper receipt therefor.

SECTION 36. Section 221(d), Texas Probate Code, is amended to read as follows:

(d) Hearing. 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, he shall proceed to examine such exhibit and account, and hear all evidence for and against the same, and shall, if necessary, restate, and audit and settle the same. If the court is satisfied that the matters entrusted to the applicant have been handled and accounted for in accordance with law, he 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 or persons entitled by law to receive it. ~~[A guardian of the person shall be required to comply with all lawful orders of the court concerning his ward.]~~

SECTION 37. Sections 222(b) and (c), Texas Probate Code, are amended to read as follows:

(b) With Notice. The court may remove a personal representative on its own motion, or on the complaint of any interested person, after the personal representative has been cited by personal service to answer at a time and place fixed in the notice, when:

(1) Sufficient grounds appear to support belief that he has misapplied, embezzled, or removed from the state, or that he is about to misapply, embezzle, or remove from the state, all or any part of the property committed to his care;

(2) He fails to return any account which is required by law to be made;

(3) He fails to obey any proper order of the court having jurisdiction with respect to the performance of his duties;

(4) He is proved to have been guilty of gross misconduct, or mismanagement in the performance of his duties;

(5) He becomes an incompetent, or is sentenced to the penitentiary, or from any other cause becomes incapable of properly performing the duties of his trust;

(6) As executor or administrator, he fails to make a final settlement within three years after the grant of letters, unless the time be extended by the court upon a showing of sufficient cause supported by oath; or

(7) As executor or administrator, he fails to timely file the notice required by Section 128A of this code[; or

~~(8) As guardian of the person, he cruelly treats the ward, or neglects to educate or maintain the ward as liberally as the means of such ward and the condition of his estate permit].~~

(c) Order of Removal. The order of removal shall state the cause thereof. It shall require that any letters issued to the one removed shall, if he has been personally served with citation, be surrendered, and that all such letters be cancelled of record, whether delivered or not. It shall further require, as to all the estate remaining in the hands of a removed person, delivery thereof to the person or persons entitled thereto, or to one who has been appointed and has qualified as successor representative[, and as to the person of a ward, that control be relinquished as required in the order].

SECTION 38. Section 226, Texas Probate Code, is amended to read as follows:

Sec. 226. ~~SUBSEQUENT EXECUTORS [AND GUARDIANS] ALSO SUCCEED TO PRIOR RIGHTS AND DUTIES.~~ Whenever an executor ~~[or guardian]~~ shall accept and qualify after letters of administration shall have been granted upon the estate, such executor ~~[or guardian]~~ shall, in like manner, succeed to the previous administrator, and he shall administer the estate in like manner as if his administration were a continuation of the former one, subject, however, to any legal directions of the testator contained in the will in relation to the estate.

SECTION 39. Section 230, Texas Probate Code, is amended to read as follows:

Sec. 230. CARE OF PROPERTY OF ESTATES. ~~[(a) Estates of Decedents.]~~ The executor or administrator shall take care of the property of the estate of his testator or intestate as a prudent man would take of his own property, and if there be any buildings belonging to the estate, he shall keep the same in good repair, extraordinary casualties excepted, unless directed not to do so by an order of the court.

~~[(b) Estates of Wards.~~

~~[(1) General Powers and Duties. The guardian of the estate of a ward is entitled to the possession and management of all properties belonging to the ward, to collect all debts, rentals, or claims due such ward, to enforce all obligations in his favor, and to bring and defend suits by or against him; but, in the management of the estate, the guardian shall be governed by the provisions of this Code. It is the duty of the guardian of the estate to take care of and manage such estate as a prudent man would manage his own property. He shall account for all rents, profits, and revenues that the estate would have produced by such prudent management.~~

~~(2) Power to Make Tax-Motivated Gifts. (A) On application of the guardian or any interested party, and after notice to all interested persons and to such other persons as the court may direct, and on a showing that the ward will probably remain incompetent during his lifetime, the court may, after hearing and by order, authorize the guardian to apply such principal or income of the ward's estate as is not required for the support of the ward during his lifetime or of his family towards the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the ward's estate. The court may authorize the guardian to make gifts of the ward's personal property or real estate, outright or in trust, on behalf of the ward, to or for the benefit of (i) organizations 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, (ii) the ward's heirs at law who are identifiable at the time of the order, (iii) devisees under the ward's last validly executed will, if there be such a will, (iv) and a person serving as guardian of the ward provided he is eligible under either category (ii) or (iii) above.~~

~~(B) The person making application to the court shall outline the proposed estate plan, setting forth all the benefits to be derived therefrom. The application shall also indicate that the planned disposition is consistent with the intentions of the ward insofar as they 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 his estate as herein provided.~~

~~(C) The court may appoint a guardian ad litem for the ward or any interested party at any stage of the proceedings, if deemed advisable for the protection of the ward or the interested party.~~

~~(D) Subsequent modifications of an approved plan may be made by similar application to the court.]~~

SECTION 40. Section 233A, Texas Probate Code, is amended to read as follows:

Sec. 233A. SUITS BY EXECUTORS OR[,] ADMINISTRATORS[, OR GUARDIANS]. Suits for the recovery of personal property, debts, or damages and suits for title or possession of lands or for any right attached to or growing out of the same or for injury or damage done thereto may be instituted by executors or[,] administrators[, or guardians] appointed in this state; and judgment in such cases shall be conclusive, but may be set aside by any person interested for fraud or collusion on the part of such executor or administrator.

SECTION 41. Section 238, Texas Probate Code, is amended to read as follows:

Sec. 238. OPERATION OF FARM, RANCH, FACTORY, OR OTHER BUSINESS. If the estate owns a farm, ranch, factory, or other business, the disposition of which has not been specifically directed by will, and if the same be not required to be sold at once for the payment of debts or other lawful purposes, the representative, upon order of the court, shall carry on the operation of such 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 interest of the estate. In deciding, the court shall consider the condition of the estate, and the necessity that may exist for future sale of such property or business for the payment of debts, claims, or other lawful expenditures, and shall not extend the time of renting any of the property beyond what appears consistent with the speedy settlement of the estate of a deceased person[, or the maintenance and education of a ward] or the settlement of his estate.

SECTION 42. Section 241, Texas Probate Code, is amended to read as follows:

Sec. 241. COMPENSATION OF PERSONAL REPRESENTATIVES. (a) [~~Compensation of Executors and Administrators.~~] Executors, administrators, and temporary administrators shall be entitled to receive a commission of five per cent (5%) on all sums they may actually receive in cash, and the same per cent on all sums they may actually pay out in cash, in the administration of the estate on a finding by the court that the executor or administrator has taken care of and managed the estate in compliance with the standards of this code; provided, no commission shall be allowed for receiving funds belonging to the testator or intestate which were on hand or were held for the testator or intestate at the time of his death in a financial institution or a brokerage firm, including cash or a cash equivalent held in a checking account, savings account, certificate of deposit, or money market account; nor for collecting the proceeds of any life insurance policy; nor for paying out cash to the heirs or

legatees as such; provided, further, however, that in no event shall the executor or administrator be entitled in the aggregate to more than five per cent (5%) of the gross fair market value of the estate subject to administration. If the executor or administrator manages a farm, ranch, factory, or other business of the estate, or if the compensation as calculated above is unreasonably low, the court may allow him reasonable compensation for his services, including unusual effort to collect funds or life insurance. For this purpose, the county court shall have jurisdiction to receive, consider, and act on applications from independent executors. The court may, on application of an interested person or on its own motion, deny a commission allowed by this subsection in whole or in part if:

(1) the court finds that the executor or administrator has not taken care of and managed estate property prudently; or

(2) the executor or administrator has been removed under Section 149C or 222 of this code.

~~(b) [Compensation of Guardians. A guardian of the person alone is entitled to no compensation. The guardian or the temporary guardian of the estate, or of the person and estate, shall not be entitled to, or receive, any fee or commission on the estate of the ward when it is first delivered to him; but shall be entitled to a fee of five per cent (5%) on the gross income of the ward's estate and five per cent (5%) on all money paid out on a finding by the court that the guardian has taken care of and managed the estate in compliance with the standards of this code. The term "money paid out" shall not be construed to include any money loaned or invested or paid over on the settlement of the guardianship. If the guardian manages a farm, ranch, factory, or other business of his ward, or if the compensation as calculated above is unreasonably low, the court may allow him reasonable compensation for his services. The court may, on application of an interested person or on its own motion, deny a fee allowed by this subsection in whole or in part if:~~

~~[(1) the court finds that the guardian has not taken care of and managed estate property prudently; or~~

~~[(2) the guardian has been removed under Section 222 of this code.~~

[(e) Definition. In this section, "financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions, including banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations, and credit unions.

SECTION 43. The heading of Chapter VIII, Texas Probate Code, is amended to read as follows:

#### CHAPTER VIII. PROCEEDINGS DURING ADMINISTRATION [AND GUARDIANSHIP]

SECTION 44. Section 248, Texas Probate Code, is amended to read as follows:

Sec. 248. APPOINTMENT OF APPRAISERS. At any time after the grant of letters testamentary or of administration [~~or of guardianship~~], upon the application of any interested person or if the court shall deem necessary, the court shall appoint not less than one nor more than three disinterested persons, citizens of the county in which letters were granted, to appraise the property of the estate. In such event and when part of the estate is situated in a county other than the county in which letters were granted, if the court shall deem necessary it may appoint not less than one nor more than three disinterested persons, citizens of the county where such part of the estate is situated, to appraise the property of the estate situated therein.

SECTION 45. Section 250, Texas Probate Code, is amended to read as follows:

Sec. 250. INVENTORY AND APPRAISEMENT. Within ninety days after his qualification, unless a longer time shall be granted by the court, the representative shall file with the clerk of court a verified, full and detailed inventory, in one written instrument, of all the property of such estate which has come to his possession or knowledge, which inventory shall include:

(a) all real property of the estate situated in the State of Texas;

(b) all personal property of the estate wherever situated. The representative shall set out in the inventory his appraisal of the fair market value of each item thereof as of the date of death in the case of grant of letters testamentary or of administration [~~or as of the date of grant of letters of guardianship~~], as the case may be; provided that if the court shall appoint an appraiser or appraisers of the estate, the representative shall determine the fair market value of each item of the inventory with the assistance of such appraiser or appraisers and shall set out in the inventory such appraisal. The inventory shall specify what portion of the property, if any, is separate property and what portion, if any, is community property. If any property is owned in common with others, the interest owned by the estate shall be shown, together with the names and relationship, if known, of co-owners. Such inventory, when approved by the court and duly filed with the clerk of court, shall constitute for all purposes the inventory and appraisal of the estate referred to in this Code. The court for good cause shown may require the filing of the inventory and appraisal at a time prior to ninety days after the qualification of the representative.

SECTION 46. Sections 295(a) and (b), Texas Probate Code, are amended to read as follows:

(a) When notice required for lien claimants. Within four months after receiving letters, the representative of an estate shall give notice of the issuance of such letters to each and every person having a claim for money against the estate of a decedent[, or ward, as the case may be], provided:

(1) That such claim is secured by a deed of trust, mortgage, vendor's, mechanic's or other contractor's lien upon real estate belonging to such estate; and

(2) That the instrument creating, extending, or transferring such lien was duly recorded prior to the death of a testator or intestate in the county in which the real estate covered by such lien is situated, or prior to the time at which title vested in an heir or devisee.

(b) When notice required for general claimants. Within four months after receiving letters, the representative 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 decedent[, or ward, as applicable,] if the representative has actual knowledge of the claim.

SECTION 47. Section 298, Texas Probate Code, is amended to read as follows:

Sec. 298. CLAIMS AGAINST ESTATES OF DECEDENTS [~~AND WARDS~~]. (a) Claims Against Decedent's Estate Postponed if not Presented in Six Months. All claims for money against a testator or intestate shall be presented to the executor or administrator within six months after the original grant of letters testamentary or of administration; otherwise the payment thereof shall be postponed until the claims which have been presented within six months and allowed by the executor or administrator and approved by the court have been first entirely paid; provided, however, that the failure of the holder of a secured claim to present his claim within said six month period shall not cause his claim to be postponed, but it shall be treated as a claim to be paid in accordance with subsequent provisions of this Code.

(b) [~~Time for Presentation of Claims to Guardians. Claims may be presented to the guardian at any time when the estate is not closed and when suit on such claims has not been barred by the general statutes of limitation.~~

(c) Claims Barred by Limitation Not to Be Allowed or Approved. No claims against a decedent [~~or ward~~], or against the estate of *the decedent* [~~either~~], on which a suit is barred by a general statute of limitation applicable thereto shall be allowed by a personal representative. If allowed by the representative and the court is satisfied that limitation has run, the claim shall be disapproved.

SECTION 48. Section 301, Texas Probate Code, is amended to read as follows:

Sec. 301. CLAIMS MUST BE AUTHENTICATED. No [~~Except as hereinafter provided with respect to the payment of unauthenticated claims by guardians, no~~] personal representative of a decedent's estate [~~or of the estate of a ward~~] shall allow, and the court shall not approve, a claim for money against such estate, unless such claim be 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 shall also state the facts upon which the claim is founded. A photostatic copy of any

exhibit or voucher necessary to prove a claim may be offered with and attached to the claim in lieu of the original.

SECTION 49. Section 304, Texas Probate Code, is amended to read as follows:

Sec. 304. 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 such corporation. When an affidavit is made by an officer of a corporation, or by an executor, administrator, [guardian,] trustee, assignee, agent, or attorney, it shall be sufficient to state in such affidavit that the person making it has made diligent inquiry and examination, and that he believes that the claim is just and that all legal offsets, payments, and credits made known to the affiant have been allowed.

SECTION 50. Section 306(d), Texas Probate Code, is amended to read as follows:

(d) Payment of Maturities on Secured Claims. If property securing a claim allowed, approved, and fixed under Paragraph (2) of Subsection (a) hereof is not sold or distributed within twelve months from the date letters testamentary or of administration [~~or guardianship~~] are granted, the representative of the estate shall promptly pay all maturities which have accrued on the debt according to the terms thereof, and shall perform all the terms of any contract securing same. If the representative defaults in such payment or performance, on motion of the claimholder, the court shall require the sale of said property subject to the unmaturing part of such debt and apply the proceeds of the sale to the liquidation of the maturities, or, at the option of the claimholder, a motion may be made in a like manner to require the sale of said property free of such lien and to apply the proceeds to the payment of the whole debt.

SECTION 51. Section 311, Texas Probate Code, is amended to read as follows:

Sec. 311. WHEN CLAIMS ENTERED IN DOCKET. [~~(a) Claims Against Estates of Decedents.~~] If a claim against the estate of a decedent has been presented within six months after the issuance of original testamentary letters or of administration, and all or part of such claim is allowed by the executor or administrator, the claim shall forthwith be filed with the county clerk of the proper county, who shall enter the same in its proper place upon the claim docket. If such claim is not so presented within such time, the payment thereof, should it be approved in whole or in part, shall be postponed until all other claims which have been presented, allowed, and approved within the time prescribed have been first entirely paid.

[~~(b) Claims Against Estates of Wards. 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 forthwith be filed with the county clerk of the proper county, who shall enter it on the claim docket.~~]

SECTION 52. Sections 312(a) and (e), Texas Probate Code, are amended to read as follows:

(a) Contest of Claims. Any person interested in an estate [~~or ward~~] may, at any time before the court has acted upon a claim, appear and object in writing to the approval of the same, or any part thereof, and in such case the parties shall be entitled to process for witnesses, and the court shall hear proof and render judgment as in ordinary suits.

(e) Appeal. When a claimant or any person interested in an estate [~~or ward~~] shall be dissatisfied with the action of the court upon a claim, he may appeal therefrom to the courts of [~~civil~~] appeals, as from other judgments of the county court in probate matters.

SECTION 53. Section 314, Texas Probate Code, is amended to read as follows:

Sec. 314. PRESENTMENT OF CLAIMS A PREREQUISITE FOR JUDGMENT. No judgment shall be rendered in favor of a claimant upon any claim for money which has not been legally presented to the representative of an estate [~~or ward~~], and rejected by him or by the court, in whole or in part.

SECTION 54. Section 317, Texas Probate Code, is amended to read as follows:

Sec. 317. CLAIMS BY PERSONAL REPRESENTATIVES. (a) By Executors or Administrators. The foregoing provisions of this Code relative to the presentation of claims against an estate shall not be construed to apply to any claim of the executor or administrator against his testator or intestate; but an executor or administrator holding such claim shall file the same in the court granting his letters, verified by affidavit as required in other cases, within six months after he has qualified, or such claim shall be barred.

~~(b) [By Guardians. A claim which the guardian held against the ward or his estate at the time of his appointment, or which 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, who shall enter it upon the claim docket, after which it shall take the same course as other claims.~~

~~(e) Action on Such Claims. When a claim by an executor or[, administrator[, or guardian] has been filed with the court within the required time, such claim shall be entered upon the claim docket and acted upon by the court in the same manner as in other cases, and, when the claim has been acted upon by the court, an appeal from the judgment of the court may be taken as in other cases.~~

~~(c) [(4)] Provisions Not Applicable to Certain Claims. The foregoing provisions relative to the presentment of claims shall not be so construed as to apply to the claim of any heir, devisee, or legatee who claims in such capacity, or to any claim that accrues against the estate after the granting of letters for which the representative of the estate has contracted.~~

SECTION 55. Section 319, Texas Probate Code, is amended to read as follows:

Sec. 319. CLAIMS NOT TO BE PAID UNLESS APPROVED. ~~No [Except as provided for payment at his own risk by a guardian of an unauthenticated claim, no] claim for money against the estate of a decedent [or ward], or any part thereof, shall be paid until it has been approved by the court or established by the judgment of a court of competent jurisdiction.~~

SECTION 56. Section 320, Texas Probate Code, is amended to read as follows:

Sec. 320. ORDER OF PAYMENT OF CLAIMS. (a) ~~[Estates of Decedents.]~~ Executors and administrators, when they have funds in their hands belonging to the estate, shall pay in the following order:

(1) Funeral expenses and expenses of last sickness, in an amount not to exceed Five Thousand Dollars, if the claims therefor have been presented within sixty days from the original grant of letters testamentary or administration, but if not presented within such time, their payment shall be postponed until the allowances made to the widow and children, or to either, are paid.

(2) Allowances made to the widow and children, or to either.

(3) Expenses of administration and the expenses incurred in the preservation, safekeeping, and management of the estate.

(4) Other claims against the estate in the order of their classification.

~~(b) [Estates of Wards. The guardian shall pay all claims against the estate of his ward that have been allowed and approved, or established by suit, as soon as practicable, in the following order:~~

~~(1) expenses for the care, maintenance and education of the ward or his dependents;~~

~~(2) funeral expenses and expenses of last sickness, if the guardianship is kept open after the death of the ward as provided by Section 404A of this Code, except that any claim against the estate of a ward that has been allowed and approved or established by suit prior to the death of the ward shall be paid prior to the funeral expenses and expenses of last sickness;~~

~~(3) expenses of administration; and~~

~~(4) other claims against the estate.~~

~~(e) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitations and upon due proof procure an order for its allowance and payment from the estate.~~

SECTION 57. Section 321, Texas Probate Code, is amended to read as follows:

Sec. 321. DEFICIENCY OF ASSETS. When there is a deficiency of assets to pay all claims of the same class, the claims in such class shall be paid pro rata, as directed by the court, and in the order directed. No executor or[, administrator[, or guardian] shall be allowed to pay any claims, whether the estate is solvent or insolvent, except with the pro rata amount of the funds of the estate that have come to hand.

SECTION 58. Section 324, Texas Probate Code, is amended to read as follows:

Sec. 324. REPRESENTATIVES NOT TO PURCHASE CLAIMS. It shall be unlawful, and cause for removal, for an executor ~~or~~, administrator, ~~or guardian,~~ whether acting under appointment by will or under orders of the court, to purchase for his own use or for any purposes whatsoever, any claim against the estate he represents. Upon written complaint by any person interested in the estate, and satisfactory proof of violation of this provision, after citation and hearing, the court shall enter its order cancelling the claim, and no part thereof shall be paid out of the estate; and the judge may, in his discretion, remove such representative.

SECTION 59. Sections 329(a) and (c), Texas Probate Code, are amended to read as follows:

(a) Circumstances Under Which Money May Be Borrowed. Any real or personal property of an estate may be mortgaged or pledged by deed of trust or otherwise as security for an indebtedness, under order of the court, when necessary for any of the following purposes:

(1) For the payment of any ad valorem, income, gift, estate, inheritance, or transfer taxes upon the transfer of an estate or due from a decedent ~~or ward~~ or his estate, regardless of whether such taxes are assessed by a state, or any of its political subdivisions, or by the federal government or by a foreign country; or

(2) For payment of expenses of administration, including sums necessary for operation of a business, farm, or ranch owned by the estate; or

(3) For payment of claims allowed and approved, or established by suit, against the estate; or

(4) To renew and extend a valid, existing lien; ~~or~~

~~[(5) In the case of guardians of estates, if the real estate of the ward is not revenue producing but could be made revenue producing by certain improvements and repairs, or if the revenue therefrom could be increased by making such improvements or repairs thereon, to make such improvements or repairs; or~~

~~[(6) In the case of guardians of estates, the probate court in its discretion may authorize the borrowing of money if the court finds it to be in the best interest of the ward or may authorize the borrowing of money for the purchase of a residence for the ward and any dependents of the ward].~~

(c) Order Authorizing Such Borrowing, or Extension of Lien. The court, if satisfied by the evidence adduced at the hearing upon said application that it is to the interest of the estate to borrow money, or to extend and renew an existing lien, shall issue its order to that effect, setting out the terms and conditions of the authority granted; provided, however: ~~[(1) that as to the estate of a decedent], the loan or renewal shall not be for a term longer than three years from the granting of original letters to the representative of such estate, but the court may authorize an extension of such lien for not more than one additional year without further citation or notice; and (2) that as to the estate of a ward, the term of the loan or renewal shall be for such length of time as the court shall determine to be for the best interest of such estate. If a new lien is created upon property of an estate, the court may require that the representative's general bond be increased, or an additional bond given, for the protection of the estate and its creditors, as for the sale of real property belonging to the estate].~~

SECTION 60. Section 339, Texas Probate Code, is amended to read as follows:

Sec. 339. SALES OF PERSONAL PROPERTY TO BE REPORTED; DECREE VESTS TITLE. All sales of personal property shall be reported to the court, and the laws regulating sales of real estate as to confirmation or disapproval of sales shall apply, 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 intestate ~~or 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 representative of an estate may, upon request, issue a bill of sale without warranty to the purchaser as evidence of title, the expense thereof to be borne by the purchaser.

SECTION 61. Section 341, Texas Probate Code, is amended to read as follows:



Sec. 341. APPLICATION FOR SALE OF REAL ESTATE. [(a)] Application may be made to the court for an order to sell property of the estate when it appears necessary or advisable in order to:

(1) Pay expenses of administration, funeral expenses and expenses of last sickness of decedents, and allowances and claims against the estates of decedents [and wards].

(2) ~~Make up the deficiency when the income of a ward's estate, and the personal property thereof, and the proceeds of previous sales, are insufficient for the education and maintenance of the ward, or to pay debts against the estate.~~

~~[(3) Dispose of property of the estate of a ward which consists in whole or in part of an undivided interest in real estate, when it is deemed to the best interest of the estate to sell such 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 upon the value of such real estate, when the improvement of same with a view to making it productive is not deemed advantageous or advisable, and it appears that the sale of such real estate and the investment of the money derived therefrom would be to the best interest of the estate.~~

~~[(5) Conserve the estate of a ward by selling mineral interest and/or royalties on minerals in place owned by a ward.~~

[(6)] Dispose of any interest in real property of the estate of a decedent, when it is deemed to the best interest of the estate to sell such interest.

SECTION 62. Section 351, Texas Probate Code, is amended to read as follows:

Sec. 351. SALES OF EASEMENTS AND RIGHT OF WAYS. It shall be lawful to sell and convey easements and rights of ways on, under, and over the lands of an estate being administered under orders of a court, regardless of whether the proceeds of such a sale are required for payment of charges or claims against the estate, or for other lawful purposes. The procedure for such sales shall be the same as now or hereafter provided by law for sales of real property of estates of decedents [or wards] at private sale.

SECTION 63. Sections 352(c) and (d), Texas Probate Code, are amended to read as follows:

(c) A personal representative of a decedent [~~or of a ward who has been adjudged incompetent~~] may purchase property from the estate of the decedent [or ward] in compliance with the terms of a written executory contract signed by the decedent [~~or by the ward before the ward became incompetent~~], including a contract for deed, earnest money contract, buy/sell agreement, or stock purchase or redemption agreement.

(d) After issuing the notice required by this subsection, a personal representative of an estate, including an independent administrator, may purchase property from the estate on the court's determination that the sale is in the best interest of the estate. The personal representative shall give notice by certified mail, return receipt requested, unless the court requires another form of notice, to each distributee of a deceased person's estate and to each creditor whose claim remains unsettled after presenting a claim within six months of the original grant of letters. [~~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 additional notice or it may allow for the waiver of the notice required for a sale made under this subsection.

SECTION 64. Section 367(b), Texas Probate Code, is amended to read as follows:

(b) Mineral Leases, With or Without Pooling or Unitization. Personal representatives of the estates of decedents [~~, minors, and incompetents~~], appointed and qualified under the laws of this State, and acting solely under orders of court, may be authorized by the court in which the probate proceedings on such estates are pending to make, execute, and deliver leases, with or without unitization clauses or pooling provisions, providing 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 such minerals in place, belonging to such estates.

SECTION 65. Section 372, Texas Probate Code, is amended to read as follows:

Sec. 372. VALIDATION OF CERTAIN LEASES AND POOLING OR UNITIZATION AGREEMENTS BASED ON PREVIOUS STATUTES. All presently existing leases on the oil, gas, or other minerals, or one or more of them, belonging to the estates of decedents[, minors, persons of unsound mind, or habitual drunkards], and all agreements with respect to pooling, or unitization thereof, or one or more of them, or any interest therein, with like properties of others[, including agreements contemplated or authorized to be made under the terms of Section 3, Article 6008-b, Vernon's Texas Revised Civil Statutes of 1925, as amended,] having been authorized by the court having venue, and executed and delivered by the executors, administrators, [guardians,] or other fiduciaries of their estates in substantial conformity to the rules set forth in statutes heretofore existing, providing for only seven days notice in some instances, and also for a brief order designating a time and place for hearing, are hereby validated in so far as said period of notice is concerned, and in so far as the absence of any order setting a time and place for hearing is concerned; provided, this shall not apply to any lease or pooling or unitization agreement involved in any suit pending on the effective date of this Code wherein either the length of time of said notice or the absence of such order is in issue.

SECTION 66. Section 399, Texas Probate Code, is amended to read as follows:

Sec. 399. ANNUAL ACCOUNTS REQUIRED. (a) Estates of Decedents [~~and Wards~~] Being Administered Under Order of Court. The personal representative of the estate of a decedent [~~or ward~~] being administered under order of court shall, upon the expiration of twelve (12) months from the date of qualification and receipt of letters, return to the court an exhibit in writing under oath setting forth a list of all claims against the estate that were presented to him within the period covered by the account, specifying which have been allowed by him, which have been paid, which have been rejected and the date when rejected, which have been sued upon, and the condition of the suit, and show:

(1) All property that has come to his knowledge or into his possession not previously listed or inventoried as property of the estate [~~or ward, as the case may be~~].

(2) Any changes in the property of the estate [~~or ward~~] which 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 thereof, with receipts of principal and income to be shown separately.

(4) A complete, accurate and detailed description of the property being administered, the condition of the property and the use being made thereof, and, if rented, the terms upon and the price for which rented.

(5) The cash balance on hand and the name and location of the depository wherein such balance is kept; also, any other sums of cash in savings accounts or other form, deposited subject to court order, and the name and location of the depository thereof.

(6) A detailed description of personal property of the estate, which shall, with respect to bonds, notes, and other securities, include 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) Annual Reports Continue Until Estate Closed. Each personal representative of the estate of a decedent [~~or ward~~] shall continue to file annual accounts conforming to the essential requirements of those in Subsection (a) hereof 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, securities, and 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 thereto.

(c) [~~Guardians of the Person. The guardian of the person, when there is a separate guardian of the estate, shall at the expiration of twelve (12) months from the date of his qualification and receipt of letters, and annually thereafter, return to the court his sworn account showing each item of receipts and disbursements for the support and maintenance of the ward, his education when necessary, and support and maintenance of the ward's~~

~~dependents, when authorized by order of court. All who are guardians of the person shall include in their reports facts concerning each ward's physical welfare, his well-being, and his progress in education, if the latter be pertinent. Unless the judge is satisfied that the facts stated are true, he shall issue such orders as are necessary for the best interest of the ward.~~

~~[(d)] Supporting Vouchers, etc., Attached to Accounts. Annexed to all annual accounts of representatives of estates [and wards, and, so far as applicable, accounts of guardians of the persons of wards and guardians of those wards entitled to receive governmental funds, required by this Section,] shall be:~~

(1) Proper vouchers for each item of credit claimed in the account, or, in the absence of such voucher, the item must be supported by evidence satisfactory to the court. Original vouchers may, upon application, be returned to the representative after approval of his account.

(2) An official letter from the bank or other depository in which the money on hand of the estate [~~or ward~~] is deposited, showing the amounts in general or special deposits.

(3) Proof of the existence and possession of securities owned by the estate, or shown by the accounting, as well as other assets held by a depository subject to orders of the court, the proof to be by one of the following means:

a. By an official letter from the bank or other depository wherein said securities or other assets are held for safekeeping; provided, that if such depository is the representative, the official letter shall be signed by a representative of such depository other than the one verifying the account; or

b. By a certificate of an authorized representative of the corporation which is surety on the representative's bonds; or

c. By a certificate of the clerk or a deputy clerk of a court of record in this State; or

d. By an affidavit of any other reputable person designated by the court upon request of the representative or other interested party.

Such certificate or affidavit shall be to the effect that the affiant has examined the assets exhibited to him by the representative as assets of the estate in which the accounting is made, and shall describe the assets by reference to the account or otherwise sufficiently to identify those so exhibited, and shall state the time when and the place where exhibited. In lieu 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 his order with respect thereto, a statement that the securities shown therein as on hand were in fact exhibited to him, and that those so exhibited 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 court may require additional evidence as to the existence and custody of such securities and other personal property as in his discretion he shall deem proper; and may require the representative to exhibit them to the court, or any person designated by him, at any time at the place where held for safekeeping.

~~(d) [(e)] Verification of Account. The representative filing the account shall attach thereto his affidavit that it contains a correct and complete statement of the matters to which it relates.~~

~~[(f) Annual Accounts May be Waived, When. In cases in which the income of a ward's estate from real property becomes negligible, and the estate owns no personal property, the estate may be closed, as hereinafter provided. If the estate owns personal property which produces negligible or fixed income, the court shall have 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 same must be closed.]~~

SECTION 67. Section 400, Texas Probate Code, is amended to read as follows:

Sec. 400. PENALTY FOR FAILURE TO FILE ANNUAL ACCOUNT. Should any personal representative of an estate [~~or guardian of the person of a ward,~~] fail to return any annual account required by preceding sections of this Code, any person interested in said estate [~~or ward~~] may, upon written complaint, or the court upon its own motion may, cause the personal representative to be cited to return such account, and show cause for such

failure. If he fails to return said account after being so cited, or fails to show good cause for his failure so to do, the court, upon hearing, may revoke the letters of such representative, and may fine him in a sum not to exceed Five Hundred Dollars (\$500). He and his sureties shall be liable for any fine imposed, and for all damages and costs sustained by reason of such failure, which may be recovered in any court of competent jurisdiction.

SECTION 68. Section 404, Texas Probate Code, is amended to read as follows:

Sec. 404. ~~CLOSING ADMINISTRATION OF ESTATES OF DECEDENTS [AND GUARDIANSHIP OF WARDS OR THEIR ESTATES].~~ [(a) Administration of the estates of decedents [and guardianship of the persons and estates of wards] shall be settled and closed[;

[1] when all the debts known to exist against the estate of a deceased person have been paid, or when they have been paid so far as the assets in the hands of an administrator or executor of such estate will permit, and when there is no further need for administration[;

[2] when a minor ward dies, or becomes an adult by becoming eighteen years of age, or by removal of disabilities of minority according to the law of this state, or by marriage;

[3] when an incompetent ward dies, or is decreed as provided by law to have been restored to sound mind or sober habits, or, being married, when his or her spouse has qualified as survivor in community;

[4] when a ward entitled to funds from a governmental source dies, or when the court finds that the necessity for the guardianship of that person has ended;

[5] when the estate of a ward becomes exhausted; or

[6] when the foreseeable income accruing to a ward or to his estate is so negligible that maintaining the guardianship in force would be burdensome.

~~[(b) In a case arising under Subsection (a)(6) of this section, the court may authorize the income to be paid to a parent, or some other person who has acted as guardian, to assist as far as possible 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 not more than \$25,000, 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 144(a) of this code].~~

SECTION 69. Section 405, Texas Probate Code, is amended to read as follows:

Sec. 405. ACCOUNT FOR FINAL SETTLEMENT OF ESTATES OF DECEDENTS ~~[AND PERSONS AND ESTATES OF WARDS]~~. When administration of the estate of a decedent[, or guardianship of person or estate, or of the person and estate of a ward,] is to be settled and closed, the personal representative of such estate [or of such ward] shall present to the court his verified account for final settlement. In such 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 proceedings had in the administration [or guardianship, as the case may be,] concerning sales, renting or hiring, leasing for mineral development, or any other transactions on behalf of the estate [or of the ward, as the case may be,] including exhibits, accounts, and vouchers previously filed and approved, without restating the particular items thereof. Each final account, however, shall be accompanied by proper vouchers in support of each item thereof not already accounted for and shall show, either by reference to any proceedings authorized above or by statement of the facts:

~~[(a) As to Estates of Decedents,]~~

1. The property belonging to the estate which has come into the hands of the executor or administrator.
2. The disposition that has been made of such property.
3. The debts that have been paid.
4. The debts and expenses, if any, still owing by the estate.
5. The property of the estate, if any, still remaining on hand.

6. The persons entitled to receive such estate, their relationship to the decedent, and their residence, if known, and whether adults or minors, and, if minors, the names of their guardians, if any.

7. All advancements or payments that have been made, if any, by the executor or administrator from such estate to any such person.

~~(b) As to Estates of Wards.~~

~~[1. The property, rents, revenues, and profits received by the guardian, and belonging to his ward, during his guardianship.~~

~~[2. The disposition made of such property, rents, revenues, and profits.~~

~~[3. The expenses and debts, if any, against the estate remaining unpaid.~~

~~[4. The property of the estate remaining in the hands of such guardian, if any.~~

~~[5. Such other facts as appear necessary to a full and definite understanding of the exact condition of the guardianship.]~~

SECTION 70. Section 406, Texas Probate Code, is amended to read as follows:

Sec. 406. PROCEDURE IN CASE OF NEGLECT OR FAILURE TO FILE FINAL ACCOUNT; PAYMENTS DUE MEANTIME. If a personal representative charged with the duty of filing a final account fails or neglects so to do at the proper time, the court shall, upon its own motion, or upon the written complaint of any one interested in the decedent's [or ward's] estate which has been administered, cause such representative to be cited to appear and present such account within the time specified in the citation. ~~[So far as applicable, this Section shall also govern with respect to guardians of the person. Meantime, rentals or other payments becoming due to the ward, his estate, or his guardian, between the date the ward's disability terminates or the date of the ward's death and the effective date of the guardian's discharge may be paid or tendered to the emancipated ward, his guardian, or the personal representative of the ward's estate, at obligor's option, and such payment or tender shall constitute and be an absolute discharge of such matured obligation for all purposes to the extent of the amount thus paid or tendered.]~~

SECTION 71. Section 407, Texas Probate Code, is amended to read as follows:

Sec. 407. CITATION UPON PRESENTATION OF ACCOUNT FOR FINAL SETTLEMENT. Upon the filing of an account for final settlement by temporary or permanent personal representatives of the estates of decedents ~~[or wards, or of the persons of wards]~~, citation shall contain a statement that such final account has been filed, the time and place when it will be considered by the court, and a statement requiring the person or persons cited to appear and contest the same if they see proper. Such citation shall be issued by the county clerk to the persons and in the manner set out below.

1. In case of the estates of deceased persons, notice shall be given by the personal representative to each heir or beneficiary of the decedent by certified mail, return receipt requested, unless another type of notice is directed by the court by written order. The notice must include a copy of the account for final settlement.

~~2. [If a ward be a living resident of this state who is 14 years of age or older, and his or her residence be 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.~~

~~[3. If one who has been a ward be 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.~~

~~[4. If a ward's residence is unknown, or if the ward is a non-resident 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.~~

~~[5.] If the court deems further additional notice necessary, it shall require the same by written order. In its discretion, the court may allow the waiver of notice of an account for final settlement in a proceeding concerning a decedent's estate [or a guardianship].~~

SECTION 72. Section 408(b), Texas Probate Code, is amended to read as follows:

(b) Distribution of Remaining Property. Upon final settlement of an estate, if there be any of such estate remaining in the hands of the personal representative, the court shall order ~~[that it be delivered, in case of a ward, to such ward, or in the case of a deceased ward to the personal representative of the deceased ward's estate if one be appointed, or to any other person legally entitled thereto; in case of a decedent,]~~ that a partition and distribution be made among the persons entitled to receive such estate.

SECTION 73. Section 409, Texas Probate Code, is amended to read as follows:

Sec. 409. MONEY, BECOMING DUE PENDING FINAL DISCHARGE. Until the order of final discharge of the personal representative is entered in the minutes of the court, money or other thing of value falling due to the estate ~~[or ward]~~ while the account for final settlement is pending may be paid, delivered, or tendered to the personal representative, who shall issue receipt therefor, and the obligor and/or payor shall be thereby discharged of the obligation for all purposes.

SECTION 74. Section 414, Texas Probate Code, is amended to read as follows:

Sec. 414. PROCEDURE IF REPRESENTATIVE FAILS TO DELIVER ESTATE. If any personal representative of an estate ~~[or ward]~~, upon final settlement, shall neglect to deliver to the person entitled thereto when demanded any portion of an estate or any funds or money in his hands ordered to be delivered, such person may file with the clerk of the court his written complaint alleging the fact of such neglect, the date of his demand, and other relevant facts, whereupon the clerk shall issue a citation to be served personally upon such representative, apprising him of the complaint and citing him to appear before the court and answer, if he so 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 representative is guilty of the neglect charged, the court shall enter an order to that effect, and the representative shall be liable to such person in damages at the rate of ten per cent of the amount or appraised value of the money or estate so withheld, per month, for each and every month or fraction thereof that said estate or money or funds is and/or has been so withheld after date of demand, which damages may be recovered in any court of competent jurisdiction.

SECTION 75. The following provisions of the Texas Probate Code are repealed:

- (1) Sections 7, 130, 131, 144, 157, 158, 184, 185, 191, 193, 228, 229, 231, 236, 237, 246, 247, 305, 330, 339A, 376, 383, 404A, 404B, 411, and 413;
- (2) Parts 3 and 5, Chapter V;
- (3) Part 2, Chapter VI;
- (4) Parts 9 and 10, Chapter VIII; and
- (5) Chapter IX.

SECTION 76. (a) This Act applies to:

- (1) an application for the appointment of a guardian that is filed on or after September 1, 1993; and
  - (2) an application for the appointment of a guardian that is filed before September 1, 1993, in which a guardianship has not been created.
- (b) An application described by Subsection (a)(2) of this section must be modified to conform to the changes in law made by this Act.
- (c) A guardianship existing on September 1, 1993, must be modified to conform to the changes in law made by this Act.

SECTION 77. This Act takes effect September 1, 1993.

SECTION 78. 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.

Passed the House on May 11, 1993, by a non-record vote; the House adopted S.C.R. No. 112 authorizing certain corrections in H.B. No. 2685 on May 30, 1993, by a non-record vote; passed the Senate on May 30, 1993, by a viva-voce vote; the Senate adopted S.C.R. No. 112 authorizing certain corrections in H.B. No. 2685 on May 30, 1993.