

Real Estate, Probate & Trust Law Section of the State Bar of Texas

2021 Proposed Legislation Relating to Guardianships

(All revisions are to sections of the Texas Estates Code.)

1. Section 1 of the proposed bill amends Section 1021.001(a) and adds Section 1021.001(a-1) to add an additional item as “relating to a guardianship proceeding” for county courts at law only. The change strives to achieve judicial economy by allowing county courts at law to hear cases with regard to trusts with incapacitated income or remainder beneficiaries in the same Court as their guardianship proceedings. Presently, these cases are forced to go to the district court.
2. Sections 2 -10 of the proposed bill amend Sections 1052.052; 1103.003; 1105.001-.003; 1105.051; 1105.052; 1105.103; and 1251.101 to provide for the usage of unsworn declarations in guardianship proceedings.
3. Section 11 of the proposed bill amends Section 1151.351(b)(12) to clarify that only a court investigator or guardian ad litem may be appointed to investigate a complaint relating to modification or termination of a guardianship, which is consistent with the procedures currently in Chapter 1202 (Modification or Termination of Guardianship).
4. Section 12 of the proposed bill amend Sections 1153.001(a) and 1153.001(c) to provide that the proper newspaper to be used for notice of a guardianship proceeding is a newspaper of general circulation in the county, instead of requiring it to be posted in a newspaper printed in the county. This change mirrors an earlier change in 308.051 of the Estates Code to address the reality that newspapers are often printed in a county other than the county in which they are circulated.
5. Section 13 amends Section 1155.054(d) to replace the word “require” with “order” and the word “required” with “ordered” to clarify the court’s authority, and to be consistent with Subsection 1155.151(c) with respect to the payment of costs in a guardianship.
6. Section 14 amends Section 1158.105(a) with respect to sales of personal property in a guardianship to be consistent with similar changes proposed in decedents’ estates this session and to changes enacted in 2019 with respect to the sale of real property in decedents’ estates (to clarify sale by public auction versus private contract).
7. Sections 15-27 amend Sections 1158.401-405; 1158.451; 1158.502; 1158.551-.552; and 1158.556-.558 with respect to sales of real property in a guardianship to be consistent with similar changes enacted in 2019 with respect to the sale of real property in decedents’ estates (to clarify sale by public auction versus private contract).
8. Sections 28-29 amend Sections 1163.005(a)(5) and 1163.101(c) to correct outdated references to Texas Government Code Subchapter C, Chapter 111, Department of Aging and Disability Services, and the Guardianship Certification Board.

9. Section 30 of the proposed bill adds new Section 1301.0511 to provide that provisions for notice when an application for creation of a management trust is filed will be the same as those for an application to create a guardianship under Chapter 1051. For the sake of clarity, a provision is included to specify that any already serving guardian shall also be served with citation.
10. Sections 31 and 33 of the proposed bill amend Sections 1301.101(a) and 1301.203(a) and adds new section (a-1) to clarify available termination provisions for a guardianship management trust. Language is included to provide an option for a court to extend a guardianship management trust for an incapacitated minor until the minor's death or removal of the incapacity.
11. Section 32 of the proposed bill amends Section 1301.154 to clarify that both a guardian of the estate and person shall receive a copy of an annual accounting.
12. Sections 34 and 35 of the proposed bill amend Section 1355.002 and 1355.105, statutes relating to the sale of property by a nonresident guardian to allow such nonresident guardian to withdraw the sales proceeds for the ward after the sale. Under current law, it is unclear whether and how a nonresident guardian can withdraw sale proceeds for the ward.
13. Section 36 contains the effective date of the proposed bill.

REPTL has received no statements of position on these proposed changes and has submitted these proposals to all sections and committees of the State Bar of Texas, as required by its Legislative Policy. If any comments are received, they will be forwarded to the State Bar.

Real Estate, Probate, and Trust Law Section
State Bar of Texas

By: _____
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Date: _____