ESTATES CODE

TITLE 3. GUARDIANSHIP AND RELATED PROCEDURES

SUBTITLE G. SPECIAL TYPES OF GUARDIANSHIPS

CHAPTER 1251. TEMPORARY GUARDIANSHIPS

SUBCHAPTER A. APPOINTMENT OF TEMPORARY GUARDIAN GENERALLY

Sec. 1251.001. APPOINTMENT OF TEMPORARY GUARDIAN. (a) A court shall appoint a temporary guardian, with limited powers as the circumstances of the case require, if the court:

(1) is presented with substantial evidence that a person may be an incapacitated person; and

(2) has probable cause to believe that the person, the person's estate, or both require the immediate appointment of a guardian.

(b) The person for whom a temporary guardian is appointed under this chapter retains all rights and powers that are not specifically granted to the person's temporary guardian by court order.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1251.002. NO PRESUMPTION OF INCAPACITY. A person for whom a temporary guardian is appointed under this chapter may not be presumed to be incapacitated.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1251.003. APPLICATION. (a) A sworn, written application for the appointment of a temporary guardian shall be filed before the court appoints a temporary guardian.

(b) 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 proposed temporary guardian's name, address, and qualification;

(6) the applicant's name, address, and interest; and

(7) if applicable, that the proposed temporary guardian is a private professional guardian who is certified under Subchapter C, Chapter 155, Government Code, and has complied with the requirements of Subchapter G, Chapter 1104.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 42 (S.B. 966), Sec. 2.22, eff. September 1, 2014.

Sec. 1251.004. APPOINTMENT OF ATTORNEY. On the filing of an application for temporary guardianship, the court shall appoint an attorney to represent the proposed ward in all guardianship proceedings in which independent counsel has not been retained by or on behalf of the proposed ward.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1251.005. CITATION AND NOTICE OF APPLICATION. (a) On the filing of an application for temporary guardianship, the court clerk shall issue:

(1) citation to be served on:

(A) the proposed ward; and

(B) the proposed temporary guardian named in the application, if that person is not the applicant; and

(2) notice to be served on the proposed ward's appointed attorney.

(b) The citation or notice issued as provided by Subsection (a) must describe:

(1) the rights of the parties; and

(2) the date, time, place, purpose, and possible

consequences of a hearing on the application.

(b-1) The citation issued as provided by Subsection (a) must contain a statement regarding the authority of a person under Section 1051.252 who is interested in the estate or welfare of a proposed ward or, if a guardianship is created, the ward to file with the county clerk a written request to be notified of all, or any specified, motions, applications, or pleadings filed with respect to the temporary guardianship proceeding by any person or by a person specifically designated in the request.

(c) A copy of the application must be attached to the citation or notice.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 521 (S.B. 626), Sec. 55, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 576 (S.B. 615), Sec. 22, eff. September 1, 2021.

Sec. 1251.006. SCHEDULING OF HEARING. (a) Immediately after an application for a temporary guardianship is filed, the court shall issue an order setting a certain date for the hearing on the application.

(b) Unless postponed as provided by Subsection (c), a hearing shall be held not later than the 10th day after the date the application for temporary guardianship is filed.

(c) The proposed ward or the proposed ward's attorney may consent to postpone the hearing on the application for temporary guardianship for a period not to exceed 30 days after the date the application is filed.

(d) An application for temporary guardianship takes precedence over all matters except older matters of the same character.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1251.007. MOTION FOR DISMISSAL OF APPLICATION. (a)

Subject to Subsection (b), the proposed ward or the proposed ward's attorney may appear and move for the dismissal of the application for temporary guardianship.

(b) At least one day before making a motion under Subsection (a), the proposed ward or the proposed ward's attorney shall provide notice to the party who filed the application for temporary guardianship.

(c) If a motion is made for dismissal of the application for temporary guardianship, the court shall hear and determine the motion as expeditiously as justice requires.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1251.008. RIGHTS OF PROPOSED WARD AT HEARING.At a hearing under this subchapter, the proposed ward has the right to:

(1) receive prior notice;

(2) be represented by counsel;

(3) be present;

(4) present evidence;

(5) confront and cross-examine witnesses; and

(6) a closed hearing if requested by the proposed ward or the proposed ward's attorney.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1251.009. APPEARANCE BY PROPOSED TEMPORARY GUARDIAN IN CERTAIN CIRCUMSTANCES. If the applicant for a temporary guardianship is not the proposed temporary guardian, a temporary guardianship may not be granted before a hearing on the application required by Section 1251.006(b) unless the proposed temporary guardian appears in court.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1251.010. ORDER APPOINTING TEMPORARY GUARDIAN. (a) The court shall appoint a temporary guardian by written order if, at the conclusion of the hearing required by Section 1251.006(b), the

court determines that the applicant has established that there is substantial evidence that the proposed ward is an incapacitated person, that there is imminent danger that the proposed ward's physical health or safety will be seriously impaired, or that the proposed ward's estate will be seriously damaged or dissipated unless immediate action is taken.

(b) The court shall assign to the temporary guardian only those powers and duties that are necessary to protect the proposed ward against the imminent danger shown.

(c) The order appointing the temporary guardian must describe:

(1) the reasons for the temporary guardianship; and

(2) the powers and duties of the temporary guardian.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1251.011. CERTAIN AGENCY AS TEMPORARY GUARDIAN. A court may not ordinarily appoint the Department of Aging and Disability Services as a temporary guardian under this chapter. The appointment of the department as a temporary guardian under this chapter should be made only as a last resort.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1251.012. TEMPORARY GUARDIAN'S BOND. The court shall set bond for a temporary guardian according to Chapter 1105.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1251.013. COURT COSTS. If the court appoints a temporary guardian after the hearing required by Section 1251.006(b), all court costs, including attorney's fees, may be assessed as provided by Sections 1155.054 and 1155.151.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 982 (H.B. 2080), Sec. 24, eff.

January 1, 2014.

SUBCHAPTER B. TEMPORARY GUARDIANSHIP PENDING CHALLENGE OR CONTEST OF CERTAIN GUARDIANSHIP APPLICATIONS

Sec. 1251.051. AUTHORITY TO APPOINT TEMPORARY GUARDIAN OR GRANT RESTRAINING ORDER. The court, on the court's own motion or on the motion of any interested party, may appoint a temporary guardian or grant a temporary restraining order under Rule 680, Texas Rules of Civil Procedure, or both, without issuing additional citation if:

(1) an application for a temporary guardianship, for the conversion of a temporary guardianship to a permanent guardianship, or for a permanent guardianship is challenged or contested; and

(2) the court finds that the appointment or the issuance of the order is necessary to protect the proposed ward or the proposed ward's estate.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1251.052. QUALIFICATION AND DURATION OF CERTAIN TEMPORARY GUARDIANSHIPS. (a) A temporary guardian appointed under Section 1251.051 must qualify in the same form and manner required of a guardian under this title.

(b) The term of a temporary guardian appointed under Section 1251.051 expires on the earliest of the following:

(1) the conclusion of the hearing challenging or contesting the application;

(2) the date a permanent guardian appointed by the court for the proposed ward qualifies to serve as the ward's guardian; or

(3) the nine-month anniversary of the date the temporary guardian qualifies, unless the term is extended by court order issued after a motion to extend the term is filed and a hearing on the motion is held.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02,

eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1031 (H.B. 1438), Sec. 23, eff. September 1, 2015.

SUBCHAPTER C. POWERS AND DUTIES OF TEMPORARY GUARDIANS

Sec. 1251.101. AUTHORITY OF TEMPORARY GUARDIAN. (a) When the temporary guardian files the oath or declaration prescribed by Section 1105.051 and the bond required under this title, the court order appointing the temporary guardian takes effect without the necessity for issuance of letters of guardianship.

(b) The clerk shall note compliance with the oath or declaration and bond requirements by the appointed temporary guardian on a certificate attached to the order.

(c) The order appointing the temporary guardian is evidence of the temporary guardian's authority to act within the scope of the powers and duties stated in the order.

(d) The clerk may not issue certified copies of the order until the oath or declaration and bond requirements are satisfied.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 521 (S.B. 626), Sec. 56, eff. September 1, 2021.

Sec. 1251.102. APPLICABILITY OF GUARDIANSHIP PROVISIONS. The provisions of this title relating to the guardianship of the persons and estates of incapacitated persons apply to the temporary guardianship of the persons and estates of incapacitated persons, to the extent the provisions may be made applicable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

SUBCHAPTER D. EXPIRATION AND CLOSING OF TEMPORARY GUARDIANSHIP

Sec. 1251.151. DURATION OF TEMPORARY GUARDIANSHIP. Except as provided by Section 1251.052, a temporary guardianship may not remain in effect for more than 60 days.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1251.152. ACCOUNTING. (a) At the expiration of a temporary guardianship, the temporary guardian shall file with the court clerk:

(1) a sworn list of all estate property that has come into the temporary guardian's possession;

(2) a return of all sales made by the temporary guardian; and

(3) a full exhibit and account of all the temporary guardian's acts as temporary guardian.

(b) The court shall act on the list, return, exhibit, and account filed under Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1251.153. DELIVERY OF ESTATE, FILING OF FINAL REPORT, AND DISCHARGE OF TEMPORARY GUARDIAN. (a) When temporary letters expire or cease to be effective for any reason, the court immediately shall enter an order requiring the temporary guardian to deliver the estate remaining in the temporary guardian's possession to the person legally entitled to possession of the estate.

(a-1) At the expiration of a temporary guardianship of the person, the temporary guardian shall file with the court clerk a final report that:

(1) if the ward is living, describes each reason the temporary guardianship of the person expired, including a statement of facts regarding whether the temporary guardianship expired because:

(A) the ward was found by the court to have full capacity, or sufficient capacity with supports and services, to care for himself or herself;

(B) alternatives to guardianship have been established to meet the needs of the ward; or

(C) a permanent guardian appointed by the court has qualified to serve as the ward's guardian; or

(2) if the ward is deceased, includes the date and place of death, if known, in the form and manner of the report required to be filed by a guardian of the person under Section 1163.103.

(b) On proof of delivery under Subsection (a) and approval by the court of a final report filed with the court clerk under Subsection (a-1), as applicable:

(1) the temporary guardian shall be discharged; and

(2) the sureties on the temporary guardian's bond shall be released as to future liability.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 521 (S.B. 626), Sec. 57, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 521 (S.B. 626), Sec. 58, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 576 (S.B. 615), Sec. 23, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 576 (S.B. 615), Sec. 24, eff. September 1, 2021.