ESTATES CODE

TITLE 3. GUARDIANSHIP AND RELATED PROCEDURES

SUBTITLE F. EVALUATION, MODIFICATION, OR TERMINATION OF GUARDIANSHIP

CHAPTER 1204. FINAL SETTLEMENT, ACCOUNTING, AND DISCHARGE

SUBCHAPTER A. TIME FOR SETTLEMENT OF GUARDIANSHIP

Sec. 1204.001. SETTLEMENT OF GUARDIANSHIP. (a) A guardianship shall be settled and closed as provided by this section and Section 1202.001.

(b) A guardianship of the estate of a ward shall be settled when:

(1) the ward dies;

(2) a minor ward becomes an adult by:

(A) becoming 18 years of age;

(B) removal of disabilities of minority according to the law of this state; or

(C) marriage;

(3) an incapacitated ward is decreed as provided by law to have been restored to full legal capacity;

(4) the spouse of a married ward has qualified as survivor in community and the ward does not own separate property;

(5) the ward's estate is exhausted;

(6) the foreseeable income accruing to the ward or to the ward's estate is so negligible that maintaining the guardianship in force would be burdensome;

(7) all of the assets of the estate have been placed in a management trust under Chapter 1301 or have been transferred to a pooled trust subaccount in accordance with a court order issued as provided by Chapter 1302, and the court determines that a guardianship of the ward's estate is no longer necessary; or

(8) the court determines for any other reason that a guardianship for the ward is no longer necessary.

(c) In a case arising under Subsection (b)(6), 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.

(d) If the estate of a minor ward consists only of cash or cash equivalents in an amount of $100,000 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 Chapter 1355.

(e) In the settlement of a guardianship of the estate, the court may appoint an attorney ad litem to represent the ward's interests and may allow the attorney ad litem reasonable compensation to be taxed as costs.

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. 161 (S.B. 1093), Sec. 6.059, eff. January 1, 2014.

Sec. 1204.002. APPOINTMENT OF ATTORNEY AD LITEM TO REPRESENT WARD IN FINAL SETTLEMENT UNDER CERTAIN CIRCUMSTANCES. (a) The court may appoint an attorney ad litem to represent the ward's interest in the final settlement with the guardian if:

(1) the ward is deceased and there is no executor or administrator of the ward's estate;

(2) the ward is a nonresident; or

(3) the ward's residence is unknown.

(b) The court shall allow the attorney ad litem appointed under this section reasonable compensation out of the ward's estate for any services provided by the attorney.

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

SUBCHAPTER B. PAYMENT OF CERTAIN EXPENSES AND DEBTS

Sec. 1204.051. FUNERAL ARRANGEMENTS AND OTHER DEBTS; ACCOUNT FOR FINAL SETTLEMENT ON COMPLAINT OF PERSONAL REPRESENTATIVE. Before a guardianship of the person or estate of a ward is closed on the ward's death, the guardian may, subject to the

court's approval, make all funeral arrangements and pay the funeral expenses and all other debts out of the deceased ward's 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 have the guardian of the deceased ward cited to appear and present an account for final settlement as provided by Section 1204.101.

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

Sec. 1204.052. TAXES AND EXPENSES OF ADMINISTRATION; SALE OF ESTATE PROPERTY. Notwithstanding any other provision of this title, a probate court in which proceedings to declare heirship are maintained may order:

(1) the guardian to pay any taxes or expenses of administering the estate; and

(2) the sale of property in the ward's estate, when necessary, to:

(A) pay the taxes or expenses of administering the estate; or

(B) distribute the estate among the heirs.

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

Sec. 1204.053. INHERITANCE TAXES; LIMITATION ON CLOSING ESTATE. If the guardian has been ordered to pay inheritance taxes under this code, a deceased ward's estate may not be closed unless the account for final settlement shows and the court finds that all inheritance taxes due and owing to this state with respect to all interests and property passing through the guardian's possession have been paid.

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

SUBCHAPTER C. ACCOUNT FOR FINAL SETTLEMENT

Sec. 1204.101. VERIFIED ACCOUNT REQUIRED. A guardian of

the estate shall present to the court the guardian's verified account for final settlement when the guardianship of the estate is required to be settled.

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

Sec. 1204.102. CONTENTS OF ACCOUNT. (a) Except as provided by Subsection (b), it is sufficient for an account for final settlement to:

(1) refer to the inventory without describing each item of property in detail; and

(2) refer to and adopt any guardianship proceeding concerning sales, renting, 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.

(b) An account for final settlement shall be accompanied by proper vouchers supporting each item included in the account for which the guardian has not already accounted and, either by reference to any proceeding described by Subsection (a) or by a statement of the facts, must show:

(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) any expenses and debts against the estate that remain unpaid;

(4) any estate property that remains in the guardian's possession;

(5) that the guardian has paid all required bond premiums;

(6) the tax returns the guardian has filed during the guardianship;

(7) the amount of taxes the ward owed during the guardianship that the guardian has paid;

(8) a complete account of the taxes the guardian has

paid during the guardianship, including:

(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;

(9) a description of all current delinquencies in the filing of tax returns and the payment of taxes, including a reason for each delinquency; and

(10) other facts as appear necessary to a full and definite understanding of the exact condition of the guardianship.

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

Sec. 1204.103. CERTAIN DEBTS EXCLUDED FROM SETTLEMENT COMPUTATION. In the settlement of any of the accounts of the guardian of the 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.

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

Sec. 1204.104. GUARDIAN TO ACCOUNT FOR WARD'S LABOR OR SERVICES. (a) Subject to Subsection (b), the guardian of a ward shall account for:

(1) the reasonable value of labor or services provided by the ward; or

(2) the proceeds of labor or services provided by the ward.

(b) The guardian is entitled to reasonable credits for the board, clothing, and maintenance of the ward.

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

Sec. 1204.105. CITATION AND NOTICE ON PRESENTATION OF ACCOUNT. (a) On presentation of an account for final settlement by a guardian of the estate of a ward, the county clerk shall issue citation to the persons and in the manner provided by this section.

(b) Citation issued under Subsection (a) must contain:

(1) a statement that an account for final settlement has been presented;

(2) the time and place the court will consider the account; and

(3) a statement requiring the person cited to appear and contest the account, if the person determines contesting the account is proper.

(c) Except as provided by Subsection (d) or (e), the county clerk shall:

(1) issue a citation to be personally served on a ward if:

(A) the ward is 14 years of age or older;

(B) the ward is a living resident of this state; and

(C) the ward's residence is known;

(2) issue a citation to be personally served on the executor or administrator of a deceased ward's estate, if one has been appointed; and

(3) issue a citation to a ward or the ward's estate by publication, or by posting if directed by written court order, if:

(A) the ward's residence is unknown;

(B) the ward is not a resident of this state; or

(C) the ward is deceased and no representative of the ward's estate has been appointed and has qualified in this state.

(d) The ward, in person or by attorney, may waive by writing filed with the county clerk the issuance and personal service of citation required by Subsection (c)(1).

(e) Service of citation is not required under Subsection (c)(2) if the executor or administrator is the same person as the guardian.

(f) The court may allow the waiver of notice of an account for final settlement in a guardianship proceeding.

(g) The court by written order shall require additional notice if the court considers the additional notice necessary.

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

eff. January 1, 2014.

Sec. 1204.106. EXAMINATION OF AND HEARING ON ACCOUNT. (a) On the court's satisfaction that citation has been properly served on all persons interested in the guardianship estate, the court shall examine the account for final settlement and the accompanying vouchers.

(b) 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 account and, if necessary, restate the account.

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

Sec. 1204.107. ASSETS BECOMING DUE PENDING FINAL SETTLEMENT; RECEIPT AND DISCHARGE. (a) This section does not apply to money or another thing of value held under Section 1105.153.

(b) Until the order of final discharge of the guardian is entered in the judge's guardianship docket, money or another thing of value falling due to the ward or the ward's estate while the account for final settlement is pending may be paid or tendered to the emancipated ward, the guardian, or the personal representative of the deceased ward's estate. The ward, guardian, or personal representative to whom the money or other thing of value is paid or tendered shall issue a receipt for the money or other thing of value, and the obligor or payor is discharged of the obligation for all purposes.

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

Sec. 1204.108. DELIVERY OF WARD'S PROPERTY IN POSSESSION OF GUARDIAN OF THE PERSON ON SETTLEMENT OF GUARDIANSHIP OF THE ESTATE. (a) If the guardianship of a ward is required to be settled as provided by Section 1204.001, the guardian of the person shall deliver all of the ward's property in the guardian's possession or control 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 none of the ward's property is in the guardian of the person's possession or control, the guardian shall, not later than the 60th day after the date the guardianship is required to be settled, file with the court a sworn affidavit that states:

(1) the reason the guardianship was terminated; and

(2) to whom the ward's property in the guardian's possession was delivered.

(c) The judge may issue orders as necessary for the best interests of the ward or the deceased ward's estate.

(d) This section does not discharge a guardian of the person from liability for breach of the guardian's fiduciary duties.

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

Sec. 1204.109. DELIVERY OF REMAINING ESTATE PROPERTY. On final settlement of a guardianship estate, the court shall order that any part of the estate that remains in the guardian's possession be delivered to:

(1) the ward;

(2) the personal representative of the ward's estate, if the ward is deceased and a personal representative has been appointed; or

(3) any other person legally entitled to the estate.

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

SUBCHAPTER D. CLOSING OF GUARDIANSHIP AND DISCHARGE OF GUARDIAN

Sec. 1204.151. DISCHARGE OF GUARDIAN WHEN NO ESTATE PROPERTY REMAINS. The court shall enter an order discharging a guardian from the guardian's trust and closing the guardianship estate if, on final settlement of the estate, none of the estate remains in the guardian's possession.

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

eff. January 1, 2014.

Sec. 1204.152. DISCHARGE OF GUARDIAN WHEN ESTATE FULLY ADMINISTERED. The court shall enter an order discharging a guardian of the estate from the guardian's trust and declaring the estate closed when:

(1) the guardian has fully administered the estate in accordance with this title and the court's orders;

(2) the guardian's account for final settlement has been approved; and

(3) the guardian has delivered all of the estate remaining in the guardian's possession to any person entitled to receive the estate.

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

SUBCHAPTER E. FAILURE OF GUARDIAN TO ACT

Sec. 1204.201. FAILURE TO PRESENT FINAL ACCOUNT OR REPORT. (a) The court may, on the court's own motion, and shall, on the written complaint of the emancipated ward or anyone interested in the ward or the ward's estate, have the guardian who is charged with the duty of presenting a final account or report cited to appear and present the account or report within the time specified in the citation if the guardian failed or neglected to present the account or report at the proper time.

(b) If a written complaint has not been filed by anyone interested in the guardianship of the person or estate of a minor or deceased ward, on or after the third anniversary of the date the minor ward reaches the age of majority or the date the ward dies, as applicable, the court may 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, on or after the fourth anniversary of the date the ward's whereabouts became unknown to the court, the court may remove the

estate from the court's active docket without a final accounting and without appointing a successor personal representative.

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

Sec. 1204.202. LIABILITY FOR FAILURE TO DELIVER ESTATE PROPERTY. (a) On final settlement or termination of the guardianship of the estate, if the guardian neglects when legally demanded to deliver a portion of the estate or any funds or money in the guardian's possession ordered to be delivered to a person entitled to that property, the person may file with the court clerk a written complaint alleging:

(1) the fact of the neglect;

(2) the date of the person's demand; and

(3) other relevant facts.

(b) After the filing of a complaint under Subsection (a), the court clerk shall issue a citation to be served personally on the guardian. The citation must:

(1) apprise the guardian of the complaint; and

(2) cite the guardian to appear before the court and answer, if the guardian desires, at a time designated in the citation.

(c) If at the hearing the court finds that the citation was properly served and returned, and that the guardian is guilty of the neglect charged, the court shall enter an order to that effect.

(d) If the court enters an order under Subsection (c), the guardian is liable to the person who filed the complaint under Subsection (a) for 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. Damages under this subsection may be recovered in any court of competent jurisdiction.

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