ESTATES CODE

TITLE 3. GUARDIANSHIP AND RELATED PROCEDURES

SUBTITLE D. CREATION OF GUARDIANSHIP

CHAPTER 1102. COURT-INITIATED PROCEDURE TO APPOINT GUARDIAN

Sec. 1102.001. COURT-INITIATED INVESTIGATION. (a) 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 the person's conditions and circumstances to determine whether:

(1) the person is an incapacitated person; and

(2) a guardianship is necessary.

(b) If a court appoints a guardian ad litem or court investigator under Subsection (a):

(1) the court's order appointing a guardian ad litem or court investigator must include a statement that the person believed to be incapacitated has the right to petition the court to have the appointment set aside;

(2) at the initial meeting between the guardian ad litem or court investigator and the person believed to be incapacitated, the guardian ad litem or court investigator, as appropriate, shall provide a copy of the information letter under Section 1102.003 and the order to, and discuss the contents of the letter and order with, the person believed to be incapacitated; and

(3) during the period beginning after the date of the initial meeting described by Subdivision (2) and ending on the date an application for the appointment of a guardian is filed, the person believed to be incapacitated may petition the court to have the appointment of the guardian ad litem or court investigator, as appropriate, set aside.

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. 10, eff. September 1, 2015.

Text of section as amended by Acts 2023, 88th Leg., R.S., Ch. 939 (S.B. 1624), Sec. 8

For text of section as amended by Acts 2023, 88th Leg., R.S., Ch. 1012 (H.B. 3009), Sec. 4, see other Sec. 1102.002.

Sec. 1102.002. ESTABLISHMENT OF PROBABLE CAUSE FOR INVESTIGATION. To establish probable cause under Section 1102.001, the court may require:

(1) an information letter about the person believed to be incapacitated that is submitted by an interested person and satisfies the requirements of Section 1102.003; or

(2) a written letter or certificate from a physician or psychologist who has examined the person believed to be incapacitated that satisfies the requirements of Section 1101.103, except that the letter must be:

(A) dated not earlier than the 120th day before the date of the appointment of a guardian ad litem or court investigator under Section 1102.001; and

(B) based on an examination the physician or psychologist performed not earlier than the 120th day before that date.

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

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 939 (S.B. 1624), Sec. 8, eff. September 1, 2023.

Text of section as amended by Acts 2023, 88th Leg., R.S., Ch. 1012 (H.B. 3009), Sec. 4

For text of section as amended by Acts 2023, 88th Leg., R.S., Ch. 939 (S.B. 1624), Sec. 8, see other Sec. 1102.002.

Sec. 1102.002. ESTABLISHMENT OF PROBABLE CAUSE FOR INVESTIGATION. (a) In this section:

(1) "Advanced practice registered nurse" has the meaning assigned by Section 301.152, Occupations Code.

(2) "Physician" has the meaning assigned by Section 1101.100.

(b) An advanced practice registered nurse may act under this section only if the advanced practice registered nurse is acting under a physician's delegation authority and supervision in accordance with Chapter 157, Occupations Code.

(c) To establish probable cause under Section 1102.001, the court may require:

(1) an information letter about the person believed to be incapacitated that is submitted by an interested person and satisfies the requirements of Section 1102.003; or

(2) a written letter or certificate from a physician or advanced practice registered nurse who has examined the person believed to be incapacitated that satisfies the requirements of Section 1101.103, except that the letter must be:

(A) dated not earlier than the 120th day before the date of the appointment of a guardian ad litem or court investigator under Section 1102.001; and

(B) based on an examination the physician or advanced practice registered nurse performed not earlier than the 120th day before that date.

(d) For purposes of Subsection (c)(2), a letter or certificate based on an examination by an advanced practice registered nurse must be signed by the supervising physician. The opinion of an advanced practice registered nurse that is based on an examination of a proposed ward conducted by the advanced practice registered nurse under delegation from and supervision by a physician and signed by the supervising physician is considered the supervising physician's opinion.

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

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1012 (H.B. 3009), Sec. 4, eff. September 1, 2023.

Sec. 1102.003. INFORMATION LETTER. (a) An interested person who submits an information letter under Section 1102.002(1) about a person believed to be incapacitated must, to the best of the interested person's knowledge:

(1) state the person's name, address, telephone number, county of residence, and date of birth;

(2) state whether the person's residence is a private residence, health care facility, or other type of residence;

(3) describe the relationship between the person and the interested person submitting the letter;

(4) state the names and telephone numbers of any known friends and relatives of the person;

(5) state whether a guardian of the person or estate has been appointed in this state for the person;

(6) state whether the person has executed a power of attorney and, if so, the designee's name, address, and telephone number;

(7) describe any property of the person, including the estimated value of that property;

(8) list the amount and source of any monthly income of the person;

(9) describe the nature and degree of the person's alleged incapacity; and

(10) state whether the person is in imminent danger of serious impairment to the person's physical health, safety, or estate.

(b) In addition to the requirements of Subsection (a), if an information letter under that subsection is submitted by an interested person who is a family member of the person believed to be incapacitated, the information letter must:

(1) be signed and sworn to before a notary public by the interested person; or

(2) include a written declaration signed by the interested person under penalty of perjury that the information contained in the information letter is true to the best of the person's knowledge.

(c) Any information provided by the Department of Family and Protective Services under this section that is confidential under Chapter 48, Human Resources Code, remains confidential and is not subject to disclosure under Chapter 552, Government Code.

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. 11, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 1031 (H.B. 1438), Sec. 11, eff. September 1, 2015.

Sec. 1102.004. APPLICATION FOR GUARDIANSHIP FOLLOWING INVESTIGATION. A guardian ad litem or court investigator who, after an investigation as prescribed by Section 1102.001, believes that the person is an incapacitated person and that a guardianship is necessary shall file an application for the appointment of a guardian of the person or estate, or both, for the person.

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

Sec. 1102.005. COMPENSATION OF GUARDIAN AD LITEM. (a) Regardless of whether a guardianship is created for a proposed ward and except as provided by Section 1155.151, a court that appoints a guardian ad litem under Section 1102.001 may authorize compensation of the guardian ad litem from available funds of:

(1) the proposed ward's estate; or

(2) the management trust, if a management trust has been created for the benefit of the proposed ward under Chapter 1301.

(b) Except as provided by Section 1155.151, after examining the proposed ward's assets or the assets of any management trust created for the proposed ward's benefit under Chapter 1301, and determining that the proposed ward or the management trust is unable to pay for services provided by the guardian ad litem, the court may authorize compensation from the county treasury.

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. 12, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 1031 (H.B. 1438), Sec. 12,

eff. September 1, 2015.

Sec. 1102.006. NOTICE REGARDING REQUEST TO FINANCIAL INSTITUTION FOR CUSTOMER RECORDS. If a request is made to a financial institution for a customer record in connection with an investigation conducted under Section 1102.001, the court shall provide written notice of that fact to the proposed ward with respect to whom the investigation is conducted not later than the fifth day after the date the financial institution produces the customer record.

Added by Acts 2015, 84th Leg., R.S., Ch. 1031 (H.B. 1438), Sec. 13, eff. September 1, 2015.