

ESTATES CODE

TITLE 3. GUARDIANSHIP AND RELATED PROCEDURES

SUBTITLE D. CREATION OF GUARDIANSHIP

CHAPTER 1101. GENERAL PROCEDURE TO APPOINT GUARDIAN

SUBCHAPTER A. INITIATION OF PROCEEDING FOR APPOINTMENT OF GUARDIAN

The following section was amended by the 89th Legislature. Pending publication of the current statutes, see S.B. [2587](#), 89th Legislature, Regular Session, for amendments affecting the following section.

Sec. 1101.001. APPLICATION FOR APPOINTMENT OF GUARDIAN; CONTENTS. (a) Any person may commence a proceeding for the appointment of a guardian by filing a written application in a court having jurisdiction and venue.

(b) The application must be sworn to by the applicant and state:

(1) the proposed ward's name, sex, date of birth, and address;

(2) the name, former name, if any, relationship, and address of the person the applicant seeks to have appointed as guardian;

(3) whether guardianship of the person or estate, or both, is sought;

(3-a) whether alternatives to guardianship and available supports and services to avoid guardianship were considered;

(3-b) whether any alternatives to guardianship and supports and services available to the proposed ward considered are feasible and would avoid the need for a guardianship;

(4) the nature and degree of the alleged incapacity, the specific areas of protection and assistance requested, and the limitation or termination of rights requested to be included in the court's order of appointment, including a termination of:

(A) the right of a proposed ward who is 18 years of age or older to vote in a public election;

(B) the proposed ward's eligibility to hold or

obtain a license to operate a motor vehicle under Chapter 521, Transportation Code; and

(C) the right of a proposed ward to make personal decisions regarding residence;

(5) the facts requiring the appointment of a guardian;

(6) the interest of the applicant in the appointment of a guardian;

(7) the nature and description of any kind of guardianship existing for the proposed ward in 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 a detailed description of the proposed ward's property, including:

(A) liquid assets, including any compensation, pension, insurance, or allowance to which the proposed ward may be entitled; and

(B) non-liquid assets, including real property;

(10) 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;

(11) for a proposed ward who is a minor, the following information if known by the applicant:

(A) the name of each of the proposed ward's parents and either the parent's address or that the parent is deceased;

(B) the name and age of each of the proposed ward's siblings, if any, and either the sibling's address or that the sibling is deceased; and

(C) if each of the proposed ward's parents and adult siblings are deceased, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults;

(12) for a proposed ward who is a minor, whether the minor was the subject of a legal or conservatorship proceeding in the preceding two years and, if so:

(A) the court involved;

(B) the nature of the proceeding; and

(C) any final disposition of the proceeding;

(13) for a proposed ward who is an adult, the following information if known by the applicant:

(A) the name of the proposed ward's spouse, if any, and either the spouse's address or that the spouse is deceased;

(B) the name of each of the proposed ward's parents and either the parent's address or that the parent is deceased;

(C) the name and age of each of the proposed ward's siblings, if any, and either the sibling's address or that the sibling is deceased;

(D) the name and age of each of the proposed ward's children, if any, and either the child's address or that the child is deceased; and

(E) if there is no living spouse, parent, adult sibling, or adult child of the proposed ward, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults;

(14) facts showing that the court has venue of the proceeding; and

(15) if applicable, that the person whom the applicant seeks to have appointed as a 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.

(c) For purposes of this section, a proposed ward's relatives within the third degree by consanguinity include the proposed ward's:

(1) grandparent or grandchild; and

(2) great-grandparent, great-grandchild, aunt who is a sister of a parent of the proposed ward, uncle who is a brother of a parent of the proposed ward, nephew who is a child of a brother or sister of the proposed ward, or niece who is a child of a brother or sister of the proposed ward.

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. 2.07, eff. September 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.035, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. 39), Sec. 7, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1031 (H.B. 1438), Sec. 8, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 521 (S.B. 626), Sec. 21, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 576 (S.B. 615), Sec. 19, eff. September 1, 2021.

Sec. 1101.002. CONTENTS OF APPLICATION; CONFIDENTIALITY OF CERTAIN ADDRESSES. An application filed under Section 1101.001 may omit the address of a person named in the application if:

(1) the application states that the person is or was protected by a protective order issued under Chapter 85, Family Code;

(2) a copy of the protective order is attached to the application as an exhibit;

(3) the application states the county in which the person resides;

(4) the application indicates the place where notice to or the issuance and service of citation on the person may be made or sent; and

(5) the application is accompanied by a request for an order under Section 1051.201 specifying the manner of issuance, service, and return of citation or notice on the person.

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 982 (H.B. 2080), Sec. 8, eff. January 1, 2014.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 514 (S.B. 39), Sec. 8, eff.

September 1, 2017.

Sec. 1101.003. AFFIDAVIT CONTAINING CONTACT INFORMATION OF CERTAIN PERSONS. (a) Within the time prescribed by the court, a person who files an application under Section 1101.001 shall file an affidavit with the court that states the name, address, telephone number, e-mail address, and other contact information if known by the applicant for each person entitled to notice under Section 1051.104(a).

(b) An affidavit filed under this section is privileged and confidential. The affidavit may not be released or otherwise disclosed to the public.

(c) On qualification of a guardian, the court shall provide a copy of the affidavit filed under this section to the guardian if the guardian is not the person who filed the affidavit.

Added by Acts 2023, 88th Leg., R.S., Ch. 116 (H.B. 266), Sec. 1, eff. September 1, 2023.

SUBCHAPTER B. HEARING; JURY TRIAL

Sec. 1101.051. HEARING. (a) At a hearing for the appointment of a guardian, the court shall:

(1) inquire into the ability of any allegedly incapacitated adult to:

(A) feed, clothe, and shelter himself or herself;
(B) care for his or her own physical health; and
(C) manage his or her property or financial affairs;

(2) ascertain the age of any proposed ward who is a minor;

(3) inquire into the governmental reports for any 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.

(b) A proposed ward must be present at the hearing unless the court, on the record or in the order, determines that a personal

appearance is not necessary.

(c) The court may close the hearing at the request of the proposed ward or the proposed ward's counsel.

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

Sec. 1101.052. JURY TRIAL. A proposed ward is entitled to a jury trial on request.

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

Sec. 1101.053. PROVISION OF RECORDS REQUIRED; USE OF RECORDS. (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 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:

(A) current or relevant records do not exist; and

(B) 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.

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

SUBCHAPTER C. DETERMINATION OF NECESSITY OF GUARDIANSHIP; FINDINGS AND PROOF

Sec. 1101.100. DEFINITIONS. In this subchapter:

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

(2) "Physician" means an individual licensed by the Texas Medical Board to practice medicine in this state. Added by Acts 2023, 88th Leg., R.S., Ch. 1012 (H.B. [3009](#)), Sec. 1, eff. September 1, 2023.

Sec. 1101.101. FINDINGS AND PROOF REQUIRED. (a) Before appointing a guardian for a proposed ward, the court must:

(1) find by clear and convincing evidence that:

(A) the proposed ward is an incapacitated person;

(B) it is in the proposed ward's best interest to have the court appoint a person as the proposed ward's guardian;

(C) the proposed ward's rights or property will be protected by the appointment of a guardian;

(D) alternatives to guardianship that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible; and

(E) supports and services available to the proposed ward that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible; and

(2) find by a preponderance of the evidence that:

(A) the court has venue of the case;

(B) 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;

(C) 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

(D) the proposed ward:

(i) is totally without capacity as provided by this title to care for himself or herself and to manage his or her property; or

(ii) lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property.

(b) The court may not grant an application to create a guardianship unless the applicant proves each element required by this title.

(c) A finding under Subsection (a)(2)(D)(ii) must specifically state whether the proposed ward lacks the capacity, or lacks sufficient capacity with supports and services, to make personal decisions regarding residence, voting, operating a motor vehicle, and marriage.

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. 214 (H.B. [39](#)), Sec. 8, eff. September 1, 2015.

Sec. 1101.1011. LIMITATION ON ACTS BY ADVANCED PRACTICE REGISTERED NURSE. An advanced practice registered nurse may act under this subchapter only if the advanced practice registered nurse is acting under a physician's delegation authority and supervision in accordance with Chapter [157](#), Occupations Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 1012 (H.B. [3009](#)), Sec. 1, eff. September 1, 2023.

Sec. 1101.102. DETERMINATION OF INCAPACITY OF CERTAIN ADULTS: RECURRING ACTS OR OCCURRENCES. A determination of incapacity of an adult proposed ward, other than 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 in the preceding six months and not by isolated instances of negligence or bad judgment.

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

Text of section as amended by Acts 2023, 88th Leg., R.S., Ch. 939
(S.B. [1624](#)), Sec. 7

For text of section as amended by Acts 2023, 88th Leg., R.S., Ch.

1012 (H.B. 3009), Sec. 2, see other Sec. 1101.103.

Sec. 1101.103. DETERMINATION OF INCAPACITY OF CERTAIN ADULTS: PHYSICIAN OR PSYCHOLOGIST EXAMINATION. (a) Except as provided by Section 1101.104, the court may not grant an application to create a guardianship for an incapacitated person, other than a minor or person for whom it is necessary to have a guardian appointed only to receive funds from a governmental source, unless the applicant presents to the court a written letter or certificate from:

(1) a physician licensed in this state, if the proposed ward's alleged incapacity results from a physical condition or mental condition; or

(2) a psychologist licensed in this state or certified by the Health and Human Services Commission to perform the examination, in accordance with rules adopted by the executive commissioner of the commission governing examinations of that kind, if the proposed ward's alleged incapacity results from a mental condition.

(a-1) The physician or psychologist who provides the letter or certificate under Subsection (a) must:

(1) have experience examining individuals with the physical or mental condition resulting in the proposed ward's alleged incapacity; or

(2) have an established patient-provider relationship with the proposed ward.

(a-2) The letter or certificate required by Subsection (a) must be:

(1) dated not earlier than the 120th day before the date the application is filed; and

(2) based on an examination the physician or psychologist performed not earlier than the 120th day before the date the application is filed.

(b) A letter or certificate from a physician must:

(1) describe the nature, degree, and severity of the proposed ward's incapacity, including any functional deficits regarding the proposed ward's ability to:

- (A) handle business and managerial matters;
- (B) manage financial matters;
- (C) operate a motor vehicle;
- (D) make personal decisions regarding residence, voting, and marriage; and

- (E) consent to medical, dental, psychological, or psychiatric treatment;

(2) in providing a description under Subdivision (1) regarding the proposed ward's ability to operate a motor vehicle and make personal decisions regarding voting, state whether in the physician's opinion the proposed ward:

- (A) has the mental capacity to vote in a public election; and

- (B) has the ability to safely operate a motor vehicle;

(3) provide an evaluation of the proposed ward's physical condition and mental functioning and summarize the proposed ward's medical history if reasonably available;

(3-a) in providing an evaluation under Subdivision (3), state whether improvement in the proposed ward's physical condition and mental functioning is possible and, if so, state the period after which the proposed ward should be reevaluated to determine whether a guardianship continues to be necessary;

(4) state how or in what manner the proposed ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the proposed ward's physical or mental health, including the proposed ward's ability to:

- (A) understand or communicate;
- (B) recognize familiar objects and individuals;
- (C) solve problems;
- (D) reason logically; and
- (E) administer to daily life activities with and without supports and services;

(5) state whether any current medication affects the proposed ward's demeanor or the proposed ward's ability to participate fully in a court proceeding;

(6) describe the precise physical and mental

conditions underlying a diagnosis of a mental disability, and state whether the proposed ward would benefit from supports and services that would allow the individual to live in the least restrictive setting;

(6-a) state whether a guardianship is necessary for the proposed ward and, if so, whether specific powers or duties of the guardian should be limited if the proposed ward receives supports and services; and

(7) include any other information required by the court.

(b-1) Consistent with the scope of practice of a psychologist under Chapter 501, Occupations Code, a letter or certificate from a psychologist must include the information required under Subsection (b) only in relation to the proposed ward's mental capacity.

(c) If the court determines it is necessary, the court may appoint a physician or psychologist to examine the proposed ward. The court must make its determination with respect to the necessity for a physician's or psychologist's examination of the proposed ward at a hearing held for that purpose. Not later than the fourth day before the date of the hearing, the applicant shall give to the proposed ward and the proposed ward's attorney ad litem written notice specifying the purpose and the date and time of the hearing.

(d) A physician or psychologist who examines the proposed ward, other than a physician or psychologist who examines the proposed ward under Section 1101.104(2), shall make available for inspection by the attorney ad litem appointed to represent the proposed ward a written letter or certificate from:

(1) the physician that complies with the requirements of Subsections (a), (a-1), (a-2), and (b); or

(2) the psychologist that complies with the requirements of Subsections (a), (a-1), (a-2), and (b-1).

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. 214 (H.B. 39), Sec. 9, eff.

September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 939 (S.B. 1624), Sec. 7, eff.
September 1, 2023.

Text of section as amended by Acts 2023, 88th Leg., R.S., Ch. 1012
(H.B. 3009), Sec. 2

For text of section as amended by Acts 2023, 88th Leg., R.S., Ch.
939 (S.B. 1624), Sec. 7, see other Sec. 1101.103.

Sec. 1101.103. DETERMINATION OF INCAPACITY OF CERTAIN
ADULTS: HEALTH CARE PROVIDER EXAMINATION. (a) Except as provided
by Section 1101.104, the court may not grant an application to
create a guardianship for an incapacitated person, other than a
minor or person for whom it is necessary to have a guardian
appointed only to receive funds from a governmental source, unless
the applicant presents to the court a written letter or certificate
from a physician or advanced practice registered nurse that is:

(1) dated not earlier than the 120th day before the
date the application is filed; and

(2) based on an examination the physician or advanced
practice registered nurse performed not earlier than the 120th day
before the date the application is filed.

(a-1) For purposes of Subsection (a), a letter or
certificate based on an examination by an advanced practice
registered nurse must be signed by the supervising physician.

(b) The letter or certificate must:

(1) describe the nature, degree, and severity of the
proposed ward's incapacity, including any functional deficits
regarding the proposed ward's ability to:

- (A) handle business and managerial matters;
- (B) manage financial matters;
- (C) operate a motor vehicle;
- (D) make personal decisions regarding residence,
voting, and marriage; and
- (E) consent to medical, dental, psychological,
or psychiatric treatment;

(2) in providing a description under Subdivision (1)
regarding the proposed ward's ability to operate a motor vehicle

and make personal decisions regarding voting, state whether in the physician's opinion the proposed ward:

(A) has the mental capacity to vote in a public election; and

(B) has the ability to safely operate a motor vehicle;

(3) provide an evaluation of the proposed ward's physical condition and mental functioning and summarize the proposed ward's medical history if reasonably available;

(3-a) in providing an evaluation under Subdivision (3), state whether improvement in the proposed ward's physical condition and mental functioning is possible and, if so, state the period after which the proposed ward should be reevaluated to determine whether a guardianship continues to be necessary;

(4) state how or in what manner the proposed ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the proposed ward's physical or mental health, including the proposed ward's ability to:

(A) understand or communicate;

(B) recognize familiar objects and individuals;

(C) solve problems;

(D) reason logically; and

(E) administer to daily life activities with and without supports and services;

(5) state whether any current medication affects the proposed ward's demeanor or the proposed ward's ability to participate fully in a court proceeding;

(6) describe the precise physical and mental conditions underlying a diagnosis of a mental disability, and state whether the proposed ward would benefit from supports and services that would allow the individual to live in the least restrictive setting;

(6-a) state whether a guardianship is necessary for the proposed ward and, if so, whether specific powers or duties of the guardian should be limited if the proposed ward receives supports and services; and

(7) include any other information required by the

court.

(b-1) For purposes of Subsection (b)(2), 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 is signed by the supervising physician is considered the supervising physician's opinion.

(c) If the court determines it is necessary, the court may appoint the necessary physicians or advanced practice registered nurses to examine the proposed ward. The court must make its determination with respect to the necessity for a physician's or advanced practice registered nurse's examination of the proposed ward at a hearing held for that purpose. Not later than the fourth day before the date of the hearing, the applicant shall give to the proposed ward and the proposed ward's attorney ad litem written notice specifying the purpose and the date and time of the hearing.

(d) A physician or advanced practice registered nurse who examines the proposed ward, other than a physician, advanced practice registered nurse, or psychologist who examines the proposed ward under Section 1101.104(2), shall make available for inspection by the attorney ad litem appointed to represent the proposed ward a written letter or certificate from the physician or advanced practice registered nurse that complies with the requirements of Subsections (a) and (b).

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. 214 (H.B. 39), Sec. 9, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1012 (H.B. 3009), Sec. 2, eff. September 1, 2023.

Text of section as amended by Acts 2023, 88th Leg., R.S., Ch. 938
(S.B. 1606), Sec. 1

For text of section as amended by Acts 2023, 88th Leg., R.S., Ch.
1012 (H.B. 3009), Sec. 3, see other Sec. 1101.104.

Sec. 1101.104. EXAMINATIONS AND DOCUMENTATION REGARDING

INTELLECTUAL DISABILITY. (a) If an intellectual disability is the basis of the proposed ward's alleged incapacity, the court may not grant an application to create a guardianship for the proposed ward unless the applicant presents to the court a written letter or certificate that:

(1) complies with Sections [1101.103](#)(a) and (b); or

(2) shows that not earlier than 24 months before the hearing date:

(A) the proposed ward has been examined by a physician or psychologist licensed in this state or certified by the Health and Human Services Commission to perform the examination, in accordance with rules of the executive commissioner of the commission governing examinations of that kind, and the physician's or psychologist's written findings and recommendations include a determination of an intellectual disability; or

(B) a physician or psychologist licensed in this state or certified by the Health and Human Services Commission to perform examinations described by Paragraph (A) updated or endorsed in writing a prior determination of an intellectual disability for the proposed ward made by a physician or psychologist licensed in this state or certified by the commission.

(b) A physician or psychologist described by Subsection (a)(2)(A) must preferably have experience examining individuals with an intellectual disability. For purposes of this subsection, a physician or psychologist is considered to have experience examining individuals with an intellectual disability if the physician or psychologist has an established patient-provider relationship with the proposed ward.

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. 780 (S.B. [1235](#)), Sec. 2, eff. January 1, 2014.

Acts 2023, 88th Leg., R.S., Ch. 938 (S.B. [1606](#)), Sec. 1, eff. September 1, 2023.

Text of section as amended by Acts 2023, 88th Leg., R.S., Ch. 1012

For text of section as amended by Acts 2023, 88th Leg., R.S., Ch.

938 (S.B. 1606), Sec. 1, see other Sec. 1101.104.

Sec. 1101.104. EXAMINATIONS AND DOCUMENTATION REGARDING INTELLECTUAL DISABILITY. (a) If an intellectual disability is the basis of the proposed ward's alleged incapacity, the court may not grant an application to create a guardianship for the proposed ward unless the applicant presents to the court a written letter or certificate that:

(1) complies with Sections 1101.103(a) and (b); or

(2) shows that not earlier than 24 months before the hearing date:

(A) the proposed ward has been examined by a physician or advanced practice registered nurse or by a psychologist licensed in this state or certified by the Health and Human Services Commission to perform the examination, in accordance with rules of the executive commissioner of the commission governing examinations of that kind, and the written findings and recommendations include a determination of an intellectual disability; or

(B) a physician or advanced practice registered nurse or a psychologist licensed in this state or certified by the Health and Human Services Commission to perform examinations described by Paragraph (A) updated or endorsed in writing a prior determination of an intellectual disability for the proposed ward made by a physician or by a psychologist licensed in this state or certified by the commission.

(a-1) For purposes of Subsection (a), a letter or certificate based on an examination by an advanced practice registered nurse must be signed by the supervising physician.

(b) For purposes of Subsection (a)(2)(B), the determination 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 is signed by the supervising physician is considered the supervising physician's determination.

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. 780 (S.B. [1235](#)), Sec. 2, eff. January 1, 2014.

Acts 2023, 88th Leg., R.S., Ch. 1012 (H.B. [3009](#)), Sec. 3, eff. September 1, 2023.

Sec. 1101.105. PROHIBITION AGAINST CONSIDERATION OF AGE AS SOLE FACTOR IN APPOINTMENT OF GUARDIAN FOR ADULTS. In determining whether to appoint a guardian for an incapacitated person who is not a minor, the court may not use age as the sole factor.

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

Sec. 1101.106. EVIDENCE OF NECESSITY OF GUARDIANSHIP TO RECEIVE GOVERNMENTAL FUNDS. A certificate of the executive head or a representative of a 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.

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

SUBCHAPTER D. COURT ACTION

Sec. 1101.151. ORDER APPOINTING GUARDIAN WITH FULL AUTHORITY. (a) If it is found that the proposed ward is totally without capacity to care for himself or herself, manage his or her property, operate a motor vehicle, make personal decisions regarding residence, and vote in a public election, the court may appoint a guardian of the proposed ward's person or estate, or both, with full authority over the incapacitated person except as provided by law.

(b) An order appointing a guardian under this section must contain findings of fact and specify:

- (1) the information required by Section [1101.153](#)(a);

(2) that the guardian has full authority over the incapacitated person;

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156;

(4) whether the person is totally incapacitated because of a mental condition;

(5) that the person does not have the capacity to operate a motor vehicle, make personal decisions regarding residence, and vote in a public election; and

(6) if it is a guardianship of the person of the ward or of both the person and the estate of the ward, the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1).

(c) An order appointing a guardian under this section that includes the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1) must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD'S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS \$10,000."

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. 9, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. 39), Sec. 10, eff. September 1, 2015.

Sec. 1101.152. ORDER APPOINTING GUARDIAN WITH LIMITED AUTHORITY. (a) If it is found that the proposed ward lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property with or without supports and services, the court may appoint a guardian with limited powers and permit the proposed ward to care for himself or herself, including making personal decisions regarding residence, or to manage his or her property commensurate with the proposed ward's ability.

(b) An order appointing a guardian under this section must contain findings of fact and specify:

(1) the information required by Section 1101.153(a);

(2) the specific powers, limitations, or duties of the guardian with respect to the person's care or the management of the person's property by the guardian;

(2-a) the specific rights and powers retained by the person:

(A) with the necessity for supports and services;
and

(B) without the necessity for supports and services;

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156; and

(4) whether the person is incapacitated because of a mental condition and, if so, whether the person:

(A) retains the right to make personal decisions regarding residence or vote in a public election; or

(B) maintains eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code.

(c) An order appointing a guardian under this section that includes the right of the guardian to have physical possession of the ward or to establish the ward's legal domicile as specified in Section [1151.051](#)(c)(1) must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD'S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS \$10,000."

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. 10, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. [39](#)), Sec. 11, eff. September 1, 2015.

Sec. 1101.153. GENERAL CONTENTS OF ORDER APPOINTING GUARDIAN.

- (a) A court order appointing a guardian must:
 - (1) specify:
 - (A) the name of the person appointed;
 - (B) the name of the ward;
 - (C) whether the guardian is of the person or estate of the ward, or both;
 - (D) the amount of any bond required;

(E) if it is a guardianship of the estate of the ward and the court considers an appraisal to be necessary, one, two, or three disinterested persons to appraise the estate and to return the appraisement to the court; and

(F) that the clerk will issue letters of guardianship to the person appointed when the person has qualified according to law; and

(2) if the court waives the guardian's training requirement, contain a finding that the waiver is in accordance with rules adopted by the supreme court under Section 155.203, Government Code.

(a-1) If the letter or certificate under Section 1101.103(b)(3-a) stated that improvement in the ward's physical condition or mental functioning is possible and specified a period of less than a year after which the ward should be reevaluated to determine continued necessity for the guardianship, an order appointing a guardian must include the date by which the guardian must submit to the court an updated letter or certificate containing the requirements of Section 1101.103(b).

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

(c) An order appointing a guardian or a successor guardian may specify as authorized by Section 1202.001(c) a period during which a petition for adjudication that the ward no longer requires the guardianship may not be filed without special leave.

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. 214 (H.B. 39), Sec. 12, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 521 (S.B. 626), Sec. 22, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 576 (S.B. 615), Sec. 20, eff. September 1, 2021.

Sec. 1101.154. APPOINTMENT OF GUARDIAN OF ESTATE FOR CERTAIN MINORS PROHIBITED. A court may not appoint a guardian of

the estate of a minor when a payment of claims is made under Chapter [1355](#).

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

Sec. 1101.155. DISMISSAL OF APPLICATION. If it is found that a proposed ward who is an adult possesses the capacity to care for himself or herself and manage his or her property as would a reasonably prudent person, the court shall dismiss an application for guardianship.

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

Sec. 1101.156. DEPOSIT OF ESTATE ASSETS. (a) At the time or after an order appointing a guardian is signed by the court but before letters of guardianship are issued, a court may, on the request of a party, require the deposit for safekeeping of cash, securities, or other assets of a ward or proposed ward in a financial institution described by Section [1105.155](#)(b).

(b) The amount of the bond required to be given by the guardian under Section [1105.101](#) shall be reduced in proportion to the amount of the cash or the value of the securities or other assets deposited under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1031 (H.B. [1438](#)), Sec. 9, eff. September 1, 2015.