

ESTATES CODE

TITLE 3. GUARDIANSHIP AND RELATED PROCEDURES

SUBTITLE E. ADMINISTRATION OF GUARDIANSHIP

CHAPTER 1161. INVESTMENTS AND LOANS OF ESTATES OF WARDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1161.001. GUARDIAN'S DUTY TO KEEP ESTATE INVESTED.

(a) The guardian of the estate shall invest any funds and assets of a ward's estate available for investment except:

(1) if the court orders otherwise under this chapter;

or

(2) as provided by Subsection (b).

(b) The guardian of the estate is not required to invest funds that are immediately necessary for the education, support, and maintenance of the ward or any others the ward supports as provided by this title.

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

Sec. 1161.002. STANDARD FOR MANAGEMENT AND INVESTMENT OF

ESTATE. (a) In acquiring, investing, reinvesting, exchanging, retaining, selling, supervising, and managing a ward's estate, a guardian of the estate shall exercise the judgment and care under the circumstances then prevailing that a person of ordinary prudence, discretion, and intelligence exercises in the management of the person's own affairs, considering the probable income from, probable increase in value of, and safety of the person's capital. The guardian shall also consider all other relevant factors, including:

(1) the anticipated costs of supporting the ward;

(2) the ward's age, education, current income, ability to earn additional income, net worth, and liabilities;

(3) the nature of the ward's estate; and

(4) any other resources reasonably available to the ward.

(b) In determining whether a guardian of the estate has

exercised the standard of investment required by this section with respect to an investment decision, the court shall, absent fraud or gross negligence, consider the investment of all the estate assets over which the guardian has management or control, rather than considering the prudence of only a single investment made by the guardian.

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

Sec. 1161.003. INVESTMENTS THAT MEET STANDARD FOR INVESTMENT. A guardian of the estate is considered to have exercised the standard required by Section 1161.002(a) with respect to investing the ward's estate if the guardian invests in the following:

- (1) bonds or other obligations of the United States;
- (2) tax-supported bonds of this state;
- (3) except as limited by Sections 1161.004(b) and (c), tax-supported bonds of a county, district, political subdivision, or municipality in this state;
- (4) if the payment of the shares or share accounts is insured by the Federal Deposit Insurance Corporation, shares or share accounts of:
 - (A) a state savings and loan association or savings bank that has its main office or a branch office in this state; or
 - (B) a federal savings and loan association or savings bank that has its main office or a branch office in this state;
- (5) collateral bonds that:
 - (A) are issued by a company incorporated under the laws of this state that has a paid-in capital of \$1 million or more;
 - (B) are a direct obligation of the company; and
 - (C) are specifically secured by first mortgage real estate notes or other securities pledged with a trustee;
- (6) interest-bearing time deposits that may be withdrawn on or before one year after demand in a bank that does

business in this state, if the payment of the time deposits is insured by the Federal Deposit Insurance Corporation; or

(7) an ABLE account established in accordance with the Texas Achieving a Better Life Experience (ABLE) Program under Subchapter J, Chapter 54, Education Code.

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 938 (S.B. 1764), Sec. 1, eff. September 1, 2017.

Sec. 1161.004. RESTRICTIONS ON INVESTMENT IN CERTAIN BONDS.

(a) In this section, "net funded debt" means the total funded debt less sinking funds on hand.

(b) A guardian of the estate may purchase the bonds of a county, district, or political subdivision other than a municipality only if the net funded debt of the county, district, or political subdivision that issues the bonds does not exceed 10 percent of the assessed value of taxable property in the county, district, or political subdivision.

(c) A guardian of the estate may purchase the bonds of a municipality only if the net funded debt of the municipality does not exceed 10 percent of the assessed value of taxable property in the municipality less that part of the debt incurred for acquisition or improvement of revenue-producing utilities, the revenue of which is not pledged to support other obligations of the municipality.

(d) Subsections (b) and (c) do not apply to bonds issued for road purposes in this state under Section 52, Article III, Texas Constitution, that are supported by a tax unlimited as to rate or amount.

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

Sec. 1161.005. MODIFICATION OR ELIMINATION OF DUTY OR STANDARD. On a showing by clear and convincing evidence that the action is in the best interests of the ward and the ward's estate,

the court may modify or eliminate:

(1) the duty of the guardian of the estate to keep the estate invested; or

(2) the standard required by Section 1161.002(a) with regard to investments of estate assets.

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

Sec. 1161.006. RETENTION OF CERTAIN ASSETS. (a) Without court approval a guardian of the estate may retain until the first anniversary of the date of receipt any property received into the guardianship estate at the estate's inception or added to the estate by gift, devise, inheritance, mutation, or increase, without regard to diversification of investments and without liability for any depreciation or loss resulting from the retention.

(b) The guardian shall care for and manage the retained assets as a person of ordinary prudence, discretion, and intelligence would in caring for and managing the person's own affairs.

(c) On application and a hearing, the court may issue an order authorizing the guardian to continue retaining the property after the period prescribed by Subsection (a) if the retention is an element of the guardian's investment plan as provided by Subchapter B.

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

Sec. 1161.007. HEARING TO PROTECT ESTATE. (a) The court may, on the court's own motion or on written request of a person interested in the guardianship, cite the guardian of the estate to appear and show cause why the estate is not invested or not properly invested.

(b) Except as provided by Subsection (d), at any time after giving notice to all parties, the court may conduct a hearing to protect the estate.

(c) On the hearing of the court's motion or a request made under this section, the court shall issue an order the court

considers to be in the ward's best interests.

(d) The court may not hold a final hearing on whether the estate is properly invested until the 31st day after the date the guardian is originally cited to appear under Subsection (a).

(e) The court may appoint a guardian ad litem for the limited purpose of representing the ward's best interests with respect to the investment of the ward's property at a hearing under this section.

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

Sec. 1161.008. LIABILITY OF GUARDIAN AND GUARDIAN'S SURETY.

(a) In addition to any other remedy authorized by law, if the guardian of the estate fails to invest or lend estate assets in the manner provided by this chapter, the guardian and the guardian's surety are liable for the principal and the greater of:

(1) the highest legal rate of interest on the principal during the period the guardian failed to invest or lend the assets; or

(2) the overall return that would have been made on the principal if the principal were invested in the manner provided by this chapter.

(b) In addition to the liability under Subsection (a), the guardian and the guardian's surety are liable for attorney's fees, litigation expenses, and costs related to a proceeding brought to enforce this section.

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

SUBCHAPTER B. PROCEDURE FOR MAKING INVESTMENTS OR LOANS OR
RETAINING ESTATE ASSETS

Sec. 1161.051. PROCEDURE IN GENERAL. (a) Not later than the 180th day after the date the guardian of the estate qualifies as guardian or another date specified by the court, the guardian shall:

(1) invest estate assets according to Section

1161.003; or

(2) file a written application with the court for an order:

(A) authorizing the guardian to:

(i) develop and implement an investment plan for estate assets;

(ii) invest in or sell securities under an investment plan developed under Subparagraph (i);

(iii) declare that one or more estate assets must be retained, despite being underproductive with respect to income or overall return; or

(iv) loan estate funds, invest in real estate or make other investments, or purchase a life, term, or endowment insurance policy or an annuity contract; or

(B) modifying or eliminating the guardian's duty to invest the estate.

(b) The court may approve an investment plan under Subsection (a)(2) without a hearing.

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

Sec. 1161.052. COURT ACTION. (a) If the court determines that the action requested in the application is in the best interests of the ward and the ward's estate, the court shall issue an order:

(1) granting the authority requested in the application; or

(2) modifying or eliminating the guardian's duty to keep the estate invested.

(b) An order under Subsection (a) must state in reasonably specific terms:

(1) the nature of the investment, investment plan, or other action requested in the application and authorized by the court, including any authority to invest in and sell securities in accordance with the investment plan's objectives;

(2) when an investment must be reviewed and reconsidered by the guardian; and

(3) whether the guardian must report the guardian's review and recommendations to the court.

(c) A citation or notice is not necessary to invest in or sell securities under an investment plan authorized by the court under this section.

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

Sec. 1161.053. APPLICABILITY OF PROCEDURE TO CERTAIN ASSETS. The fact that an account or other asset is the subject of a specific or general gift under a ward's will, if any, or that a ward has funds, securities, or other property held with a right of survivorship does not prevent:

(1) the guardian of the estate from taking possession and control of the asset or closing the account; or

(2) the court from authorizing an action or modifying or eliminating a duty with respect to the possession, control, or investment of the account or other asset.

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

Sec. 1161.054. INAPPLICABILITY OF PROCEDURE TO CERTAIN ASSETS. (a) The procedure prescribed by this subchapter does not apply if a different procedure is prescribed for an investment or sale by a guardian.

(b) A guardian of the estate is not required to follow the procedure prescribed by this subchapter with respect to an investment or sale that is specifically authorized by other law.

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

SUBCHAPTER C. INVESTMENTS IN CERTAIN INSURANCE OR ANNUITIES

Sec. 1161.101. DEFINITION. In this subchapter, "authorized life insurance company" means a stock or mutual legal reserve life insurance company that:

(1) is licensed by the Texas Department of Insurance

to transact the business of life insurance in this state; and

(2) maintains the legal reserve required by the laws of this state.

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

Sec. 1161.102. AUTHORITY TO INVEST IN CERTAIN INSURANCE OR ANNUITIES. Subject to this subchapter, the guardian of the estate may invest in life, term, or endowment insurance policies, in annuity contracts, or in both, issued by an authorized life insurance company or administered by the Department of Veterans Affairs.

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

Sec. 1161.103. INVESTMENT REQUIREMENTS. (a) An insurance policy in which the guardian of the estate invests must be issued on the life of:

- (1) the ward;
- (2) the ward's parent, spouse, child, sibling, or grandparent; or
- (3) another person in whose life the ward may have an insurable interest.

(b) The ward must be the annuitant in the annuity contract in which the guardian of the estate invests.

(c) Only the ward, the ward's estate, or the ward's parent, spouse, child, sibling, or grandparent may be a beneficiary of the insurance policy or of the death benefit of the annuity contract.

(d) The insurance policy or annuity contract may not be amended or changed during the ward's life and disability, except on application to and order of the court.

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

Sec. 1161.104. PROCEDURE FOR INVESTING IN INSURANCE OR ANNUITIES. (a) Before the guardian of the estate may invest in life, term, or endowment insurance policies, in annuity contracts,

or in both, the guardian must first apply to the court for an order that authorizes the investment.

(b) The application must include a report that shows:

(1) in detail the estate's financial condition on the date the application is filed;

(2) the name and address of the authorized life insurance company from which the insurance policy or annuity contract is to be purchased and that:

(A) the company is licensed by the Texas Department of Insurance to transact that business in this state on the date the application is filed; or

(B) the policy or contract is administered by the Department of Veterans Affairs;

(3) a statement of:

(A) the face amount and plan of the insurance policy sought to be purchased; and

(B) the amount, frequency, and duration of the annuity payments to be provided by the annuity contract sought to be purchased;

(4) a statement of the amount, frequency, and duration of the premiums required by the insurance policy or annuity contract; and

(5) a statement of the cash value of the insurance policy or annuity contract at the policy's or contract's anniversary nearest the ward's 21st birthday, assuming that all premiums to the anniversary are paid and that there is no indebtedness against the policy or contract incurred in accordance with its terms.

(c) If satisfied by the application and the evidence presented at the hearing that it is in the ward's interests to grant the application, the court shall enter an order granting the application.

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

Sec. 1161.105. CONTINUATION OF PREEXISTING POLICIES OR ANNUITIES. (a) A life, term, or endowment insurance policy or an

annuity contract owned by the ward when a proceeding for the appointment of a guardian of the estate is commenced may be continued in full effect if it is shown that:

(1) the company issuing the policy or contract is an authorized life insurance company; or

(2) the policy or contract is administered by the Department of Veterans Affairs.

(b) All future premiums for an insurance policy or annuity contract described by Subsection (a) may be paid out of surplus funds of the ward's estate.

(c) The guardian of the estate must apply to the court for an order to:

(1) continue the policy, the contract, or both according to the existing terms of the policy or contract; or

(2) modify the policy or contract to fit any new developments affecting the ward's welfare.

(d) Before the court grants an application filed under Subsection (c), the guardian must file a report in the court that shows in detail the financial condition of the ward's estate on the date the application is filed.

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

Sec. 1161.106. CONTROL AND OWNERSHIP OF POLICIES OR ANNUITIES. (a) Control of an insurance policy or an annuity contract and of the incidents of ownership in the policy or contract is vested in the guardian of the estate during the ward's life and disability.

(b) A right, benefit, or interest that accrues under an insurance policy or annuity contract subject to this subchapter becomes the ward's exclusive property when the ward's disability is terminated.

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

SUBCHAPTER D. INVESTMENTS IN REAL ESTATE

Sec. 1161.151. AUTHORITY TO INVEST IN REAL ESTATE; PROCEDURE AND REQUIREMENTS. (a) The guardian of the estate may invest estate assets in real estate if:

(1) the guardian believes that the investment is in the ward's best interests;

(2) there are on hand sufficient additional assets to provide a return sufficient to provide for:

(A) the education, support, and maintenance of the ward and others the ward supports, if applicable; and

(B) the maintenance, insurance, and taxes on the real estate in which the guardian wishes to invest;

(3) the guardian files a written application with the court requesting a court order authorizing the guardian to make the desired investment and stating the reasons why, in the guardian's opinion, the investment would be for the ward's benefit; and

(4) the court issues an order authorizing the investment as provided by this subchapter.

(b) If the ward's money is invested in real estate, the title to the real estate shall be made to the ward. The guardian shall inventory, appraise, manage, and account for the real estate as the guardian does with other real estate of the ward.

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

Sec. 1161.152. COURT AUTHORIZATION TO MAKE INVESTMENTS.

(a) If the guardian of the estate files an application under this subchapter, the judge shall investigate as necessary to obtain all the facts concerning the investment.

(b) Subject to Subsection (c), on the hearing of the application, the court shall issue an order that authorizes the guardian to make the investment if the court is satisfied that the investment benefits the ward. The order must specify the investment to be made and contain other directions the court considers advisable.

(c) The judge may not issue an opinion or order on the application until after the 10th day after the date the application is filed.

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

Sec. 1161.153. COURT APPROVAL OF CONTRACTS REQUIRED.

(a) If a contract is made for the investment of money in real estate under a court order, the guardian of the estate shall report the contract in writing to the court.

(b) The court shall inquire fully into the contract. If satisfied that the investment will benefit the ward's estate and that the title of the real estate is valid and unencumbered, the court may approve the contract and authorize the guardian to pay money in performance of the contract.

(c) The guardian may not pay any money on the contract until the contract is approved by a court order to that effect.

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

SUBCHAPTER E. LOANS AND SECURITY FOR LOANS

Sec. 1161.201. INAPPLICABILITY OF SUBCHAPTER. This subchapter does not apply to an investment in a debenture, bond, or other publicly traded debt security.

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

Sec. 1161.202. AUTHORITY TO MAKE LOANS. (a) If, at any time, the guardian of the estate has on hand money belonging to the ward in an amount that provides a return that is more than is necessary for the education, support, and maintenance of the ward and others the ward supports, if applicable, the guardian may lend the money for a reasonable interest rate.

(b) The guardian of the estate is considered to have obtained a reasonable interest rate for a loan for purposes of Subsection (a) if the interest rate is at least equal to 120 percent of the applicable short-term, midterm, or long-term interest rate under Section 7520, Internal Revenue Code of 1986, for the month during which the loan was made.

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

Sec. 1161.203. LOAN REQUIREMENTS. (a) Except as provided by Subsection (b), the guardian of the estate shall take as collateral the borrower's note for the money that is loaned, secured by:

(1) a mortgage with a power of sale on unencumbered real estate located in this state worth at least twice the amount of the note; or

(2) collateral notes secured by vendor's lien notes.

(b) The guardian may purchase vendor's lien notes if at least one-half has been paid in cash or its equivalent on the land for which the notes were given.

(c) Except as provided by Subsection (d), a guardian of the estate who lends estate money may not pay or transfer any money to consummate the loan until the guardian:

(1) submits to a reputable attorney for examination all bonds, notes, mortgages, abstracts, and other documents relating to the loan; and

(2) receives a written opinion from the attorney stating that the documents under Subdivision (1) are regular and that the title to relevant bonds, notes, or real estate is clear.

(d) A guardian of the estate may obtain a mortgagee's title insurance policy on any real estate loan instead of an abstract and attorney's opinion under Subsection (c).

(e) The borrower shall pay attorney's fees for any legal services required by Subsection (c).

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

Sec. 1161.204. GUARDIAN'S DUTY TO REPORT LOAN TO COURT.

(a) Not later than the 30th day after the date the guardian of the estate loans money from the estate, the guardian shall file with the court a written report, accompanied and verified by an affidavit, stating fully the facts related to the loan.

(b) This section does not apply to a loan made in accordance

with a court order.

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

Sec. 1161.205. GUARDIAN'S LIABILITY. (a) Except as provided by Subsection (b), a guardian of the estate who loans estate money with the court's approval on security approved by the court is not personally liable if the borrower is unable to repay the money and the security fails.

(b) If the guardian committed fraud or was negligent in making or managing the loan, including in collecting the loan, the guardian and the guardian's surety are liable for the loss sustained by the guardianship estate as a result of the fraud or negligence.

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