

ESTATES CODE

TITLE 3. GUARDIANSHIP AND RELATED PROCEDURES

SUBTITLE F. EVALUATION, MODIFICATION, OR TERMINATION OF
GUARDIANSHIP

CHAPTER 1202. MODIFICATION OR TERMINATION OF GUARDIANSHIP

SUBCHAPTER A. TERMINATION AND SETTLEMENT OF GUARDIANSHIP

Sec. 1202.001. TERM OF GUARDIAN OR GUARDIANSHIP.

(a) Unless otherwise discharged as provided by law, a guardian remains in office until the estate is closed.

(b) A guardianship shall be settled and closed when the ward:

(1) dies and, if the ward was married, the ward's spouse qualifies as survivor in community;

(2) is found by the court to have full capacity, or sufficient capacity with supports and services, to care for himself or herself and to manage the ward's property;

(3) is no longer a minor; or

(4) no longer must have a guardian appointed to receive funds due the ward from any governmental source.

(c) Except for an order issued under Section [1101.153\(a-1\)](#), an order appointing a guardian or a successor guardian may specify a period of not more than one year during which a petition for adjudication that the ward no longer requires the guardianship may not be filed without special leave.

(d) A request for an order under this section may be made by informal letter to the court. A person who knowingly interferes with the transmission of the request to the court may be adjudged guilty of contempt of court.

(e) If a nonresident guardian of a nonresident ward qualifies as guardian under this title, any resident guardian's guardianship may be terminated.

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. 15, eff.

September 1, 2015.

Sec. 1202.002. TERMINATION OF GUARDIANSHIP IF PARENT IS NO LONGER INCAPACITATED. (a) The powers of a person appointed to serve as the designated guardian of the person or estate, or both, of a minor child solely because of the incapacity of the minor's surviving parent and in accordance with Section 1104.053 and Subchapter D, Chapter 1104, terminate when a probate court enters an order finding that the surviving parent is no longer an incapacitated person.

(b) The powers of a person appointed to serve as the designated guardian of the person or estate, or both, of an adult individual solely because of the incapacity of the individual's surviving parent and in accordance with Section 1104.103 and Subchapter D, Chapter 1104, terminate when a probate court enters an order finding that the surviving parent is no longer an incapacitated person and reappointing the surviving parent as the individual's guardian.

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

Sec. 1202.003. TERMINATION OF GUARDIANSHIP OF ESTATE ON ESTABLISHMENT OF ABLE ACCOUNT BY CERTAIN PERSONS. On application by the guardian of the estate of a ward or another person interested in the ward's welfare, the court may order that the guardianship of the estate of the ward terminate and be settled and closed if the court finds that the ward no longer needs a guardian of the estate because all of the ward's assets have been placed in an ABLE account established in accordance with the Texas Achieving a Better Life Experience (ABLE) Program under Subchapter J, Chapter 54, Education Code, and the ward is the designated beneficiary of the account.

Added by Acts 2017, 85th Leg., R.S., Ch. 938 (S.B. 1764), Sec. 2, eff. September 1, 2017.

SUBCHAPTER B. APPLICATION FOR COMPLETE RESTORATION OF WARD'S
CAPACITY OR MODIFICATION OF GUARDIANSHIP

(a) Notwithstanding Section [1055.003](#), a ward or any person interested in the ward's welfare may file a written application with the court for an order:

(1) finding that the ward is no longer an incapacitated person and ordering the settlement and closing of the guardianship;

(2) finding that the ward lacks the capacity, or lacks sufficient capacity with supports and services, to do some or all of the tasks necessary to provide food, clothing, or shelter for himself or herself, to care for the ward's own physical health, or to manage the ward's own financial affairs and granting additional powers or duties to the guardian; or

(3) finding that the ward has the capacity, or sufficient capacity with supports and services, to do some, but not all, of the tasks necessary to provide food, clothing, or shelter for himself or herself, to care for the ward's own physical health, or to manage the ward's own financial affairs and:

(A) limiting the guardian's powers or duties; and

(B) permitting the ward to care for himself or herself, make personal decisions regarding residence, or manage the ward's own financial affairs commensurate with the ward's ability, with or without supports and services.

(b) If the guardian of a ward who is the subject of an application filed under Subsection (a) has resigned, was removed, or has died, the court may not require the appointment of a successor guardian before considering the application.

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. 16, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 935 (S.B. [1710](#)), Sec. 1, eff. September 1, 2017.

Sec. 1202.052. CONTENTS OF APPLICATION. An application filed under Section [1202.051](#) must be sworn to by the applicant and

must state:

- (1) the ward's name, sex, date of birth, and address;
- (2) the name and address of any person serving as guardian of the person of the ward on the date the application is filed;
- (3) the name and address of any person serving as guardian of the estate of the ward on the date the application is filed;
- (4) the nature and description of the ward's guardianship;
- (5) the specific areas of protection and assistance and any limitation of rights that exist;
- (6) whether the relief being sought is:
 - (A) a restoration of the ward's capacity because the ward is no longer an incapacitated person;
 - (B) the granting of additional powers or duties to the guardian; or
 - (C) the limitation of powers granted to or duties performed by the guardian;
- (7) if the relief being sought under the application is described by Subdivision (6)(B) or (C):
 - (A) the nature and degree of the ward's incapacity;
 - (B) the specific areas of protection and assistance to be provided to the ward and requested to be included in the court's order; and
 - (C) any limitation of the ward's rights requested to be included in the court's order;
- (8) the approximate value and description of the ward's property, including any compensation, pension, insurance, or allowance to which the ward is or may be entitled; and
- (9) if the ward is 60 years of age or older, the names and addresses, to the best of the applicant's knowledge, of the ward's spouse, siblings, and children or, if there is no known spouse, sibling, or child, the names and addresses of the ward's next of kin.

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

eff. January 1, 2014.

Sec. 1202.053. CITATION REQUIRED. When an application is filed under Section [1202.051](#), citation shall be served on:

- (1) the ward's guardian; and
- (2) the ward if the ward is not the applicant.

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

Sec. 1202.054. INFORMAL REQUEST FOR ORDER BY WARD; INVESTIGATION AND REPORT. (a) A ward may request an order under Section [1202.051](#) by informal letter to the court. A person who knowingly interferes with the transmission of the request to the court may be adjudged guilty of contempt of court.

(b) On receipt of an informal letter under Subsection (a), the court shall appoint the court investigator or a guardian ad litem to investigate the ward's circumstances, including any circumstances alleged in the letter, to determine whether:

- (1) the ward is no longer an incapacitated person; or
- (2) a modification of the guardianship is necessary.

(b-1) A written letter or certificate from a physician as described by Section [1202.152](#) is not required before the appointment of the court investigator or a guardian ad litem under Subsection (b).

(b-2) Not later than the 30th day after the date the court receives an informal letter from a ward under Subsection (a), the court shall send the ward a letter by certified mail:

- (1) acknowledging receipt of the informal letter; and
- (2) advising the ward of the date on which the court appointed the court investigator or guardian ad litem as required under Subsection (b) and the contact information for the court investigator or guardian ad litem.

(c) The court investigator or guardian ad litem shall file with the court and provide to the ward a report of the investigation's findings and conclusions. If the court investigator or guardian ad litem determines that it is in the best interest of the ward to terminate or modify the guardianship, the

court investigator or guardian ad litem shall file an application under Section [1202.051](#) on the ward's behalf.

(d) A guardian ad litem appointed under this section may also be appointed by the court to serve as attorney ad litem under Section [1202.101](#).

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. 935 (S.B. [1710](#)), Sec. 2, eff. September 1, 2017.

Sec. 1202.055. RESTRICTION ON SUBSEQUENT APPLICATION REGARDING CAPACITY OR MODIFICATION. A person may not reapply for complete restoration of a ward's capacity or modification of a ward's guardianship before the first anniversary of the date of the hearing on the last preceding application, except as otherwise provided by the court on good cause shown by the applicant.

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

SUBCHAPTER C. REPRESENTATION OF WARD IN PROCEEDING FOR COMPLETE RESTORATION OF WARD'S CAPACITY OR MODIFICATION OF GUARDIANSHIP

Sec. 1202.101. APPOINTMENT OF ATTORNEY AD LITEM. The court shall appoint an attorney ad litem to represent a ward in a proceeding for the complete restoration of the ward's capacity or for the modification of the ward's guardianship. Unless otherwise provided by the court, the attorney ad litem shall represent the ward only for purposes of the restoration or modification proceeding.

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

Sec. 1202.102. COMPENSATION FOR ATTORNEY AD LITEM AND GUARDIAN AD LITEM. (a) An attorney ad litem appointed under Section [1202.101](#) is entitled to reasonable compensation for services in the amount set by the court to be taxed as costs in the

proceeding, regardless of whether the proceeding results in the restoration of the ward's capacity or a modification of the ward's guardianship.

(b) A guardian ad litem appointed in a proceeding involving the complete restoration of a ward's capacity or modification of a ward's guardianship is entitled to reasonable compensation, as provided by Section [1054.055\(a\)](#), regardless of whether the proceeding results in the restoration of the ward's capacity or a modification of the ward's guardianship.

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

Sec. 1202.103. RETENTION AND COMPENSATION OF ATTORNEY FOR WARD. (a) A ward may retain an attorney for a proceeding involving the complete restoration of the ward's capacity or modification of the ward's guardianship.

(b) The court may order that compensation for services provided by an attorney retained under this section be paid from funds in the ward's estate only if the court finds that the attorney had a good faith belief that the ward had the capacity necessary to retain the attorney's services.

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

SUBCHAPTER D. HEARING, EVIDENCE, AND ORDERS IN PROCEEDING FOR
COMPLETE RESTORATION OF WARD'S CAPACITY OR MODIFICATION OF
GUARDIANSHIP

Sec. 1202.151. EVIDENCE AND BURDEN OF PROOF AT HEARING.

(a) Except as provided by Section [1202.201](#), at a hearing on an application filed under Section [1202.051](#), the court shall consider only evidence regarding the ward's mental or physical capacity at the time of the hearing that is relevant to the complete restoration of the ward's capacity or modification of the ward's guardianship, including whether:

- (1) the guardianship is necessary; and
- (2) specific powers or duties of the guardian should

be limited if the ward receives supports and services.

(b) The party who filed the application has the burden of proof at the hearing.

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. 684 (H.B. 2407), Sec. 2, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. 39), Sec. 17, eff. September 1, 2015.

Sec. 1202.152. PHYSICIAN'S LETTER OR CERTIFICATE REQUIRED.

(a) The court may not grant an order completely restoring a ward's capacity or modifying a ward's guardianship under an application filed under Section 1202.051 unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that is dated:

(1) not earlier than the 120th day before the date the application was filed; or

(2) after the date the application was filed but before the date of the hearing.

(b) A letter or certificate presented under Subsection (a) must:

(1) describe the nature and degree of incapacity, including the medical history if reasonably available, or state that, in the physician's opinion, the ward has the capacity, or sufficient capacity with supports and services, to:

(A) provide food, clothing, and shelter for himself or herself;

(B) care for the ward's own physical health; and

(C) manage the ward's financial affairs;

(2) provide a medical prognosis specifying the estimated severity of any incapacity;

(3) state how or in what manner the ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the ward's physical or mental health;

(4) state whether any current medication affects the

ward's demeanor or the ward's ability to participate fully in a court proceeding;

(5) describe the precise physical and mental conditions underlying a diagnosis of senility, if applicable; and

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

(c) If the court determines it is necessary, the court may appoint the necessary physicians to examine the ward in the same manner and to the same extent as a ward is examined by a physician under Section [1101.103](#) or [1101.104](#).

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. 18, eff. September 1, 2015.

Sec. 1202.153. FINDINGS REQUIRED. (a) Before ordering the settlement and closing of a guardianship under an application filed under Section [1202.051](#), the court must find by a preponderance of the evidence that the ward is no longer partially or fully incapacitated.

(b) Before granting additional powers to the guardian or requiring the guardian to perform additional duties under an application filed under Section [1202.051](#), the court must find by a preponderance of the evidence that the current nature and degree of the ward's incapacity warrants a modification of the guardianship and that some or all of the ward's rights need to be further restricted.

(c) Before limiting the powers granted to or duties required to be performed by the guardian under an application filed under Section [1202.051](#), the court must find by a preponderance of the evidence that the current nature and degree of the ward's incapacity, with or without supports and services, warrants a modification of the guardianship and that some of the ward's rights need to be restored, with or without supports and services.

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. 19, eff. September 1, 2015.

Sec. 1202.154. GENERAL REQUIREMENTS FOR ORDER. (a) A court order entered with respect to an application filed under Section 1202.051 to completely restore a ward's capacity or modify a ward's guardianship must state:

- (1) the guardian's name;
- (2) the ward's name;
- (3) whether the type of guardianship being addressed at the proceeding is a:
 - (A) guardianship of the person;
 - (B) guardianship of the estate; or
 - (C) guardianship of both the person and the estate; and
- (4) if applicable, any necessary supports and services for the restoration of the ward's capacity or modification of the guardianship.

(b) In an order described by this section, the court may not grant a power to a guardian or require the guardian to perform a duty that is a power granted to or a duty required to be performed by another guardian.

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. 20, eff. September 1, 2015.

Sec. 1202.155. ADDITIONAL REQUIREMENTS FOR ORDER RESTORING WARD'S CAPACITY. If the court finds that a ward is no longer an incapacitated person, the order completely restoring the ward's capacity must contain findings of fact and specify, in addition to the information required by Section 1202.154:

- (1) that the ward is no longer an incapacitated person;
- (2) that there is no further need for a guardianship of

the person or estate of the ward;

(3) if the ward's incapacity resulted from a mental condition, that the ward's mental capacity is completely restored;

(4) that the guardian is required to:

(A) immediately settle the guardianship in accordance with this title; and

(B) deliver all of the remaining guardianship estate to the ward; and

(5) that the clerk shall revoke letters of guardianship when the guardianship is finally settled and closed.

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

Sec. 1202.156. ADDITIONAL REQUIREMENTS FOR ORDER MODIFYING GUARDIANSHIP. If the court finds that a guardian's powers or duties should be expanded or limited, the order modifying the guardianship must contain findings of fact and specify, in addition to the information required by Section 1202.154:

(1) the specific powers, limitations, or duties of the guardian with respect to the care of the ward or the management of the ward's property, as appropriate;

(2) the specific areas of protection and assistance to be provided to the ward;

(3) any limitation of the ward's rights;

(4) if the ward's incapacity resulted from a mental condition, whether the ward retains the right to vote and make personal decisions regarding residence; and

(5) that the clerk shall modify the letters of guardianship to the extent applicable to conform to the order.

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. 21, eff. September 1, 2015.

Sec. 1202.157. ADDITIONAL REQUIREMENTS FOR ORDER DISMISSING APPLICATION. If the court finds that a modification of the ward's

guardianship is not necessary or that the ward's capacity has not been restored, the court shall dismiss the application and enter an order that contains findings of fact and specifies, in addition to the information required by Section 1202.154, that the guardian's powers, limitations, or duties with respect to the ward's care or the management of the ward's property remain unchanged.

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

SUBCHAPTER E. RESTORATION OF RIGHTS ON TERMINATION OF GUARDIANSHIP

Sec. 1202.201. REMOVAL OF FIREARM DISABILITY ON COMPLETE RESTORATION OF WARD'S CAPACITY. (a) A person whose guardianship was terminated because the person's capacity was completely restored may file an application with the court that created the guardianship for an order requesting the removal of the person's disability to purchase a firearm imposed under 18 U.S.C. Section 922(g)(4).

(b) At a proceeding involving the complete restoration of the ward's capacity under Subchapter B, the ward or a person interested in the ward's welfare may request an order seeking relief from a firearms disability described by Subsection (a).

(c) In determining whether to grant the relief sought under Subsection (a) or (b), the court must hear and consider evidence about:

(1) the circumstances that led to imposition of the firearms disability;

(2) the person's mental history;

(3) the person's criminal history; and

(4) the person's reputation.

(d) A court may not grant relief under this section unless the court makes and enters in the record the following affirmative findings:

(1) the person or ward is no longer likely to act in a manner dangerous to public safety; and

(2) removing the person's or ward's disability to purchase a firearm is in the public interest.

Added by Acts 2013, 83rd Leg., R.S., Ch. 684 (H.B. [2407](#)), Sec. 1,
eff. January 1, 2014.