

ESTATES CODE

TITLE 3. GUARDIANSHIP AND RELATED PROCEDURES
SUBTITLE H. COURT-AUTHORIZED TRUSTS AND ACCOUNTS
CHAPTER 1301. MANAGEMENT TRUSTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1301.001. DEFINITION. In this chapter, "management trust" means a trust created under Section 1301.053 or 1301.054. Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1301.002. APPLICABILITY OF TEXAS TRUST CODE. (a) A management trust is subject to Subtitle B, Title 9, Property Code.

(b) To the extent of a conflict between Subtitle B, Title 9, Property Code, and a provision of this chapter or of a management trust, the provision of this chapter or of the trust controls. Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

SUBCHAPTER B. CREATION OF MANAGEMENT TRUSTS

Sec. 1301.051. ELIGIBILITY TO APPLY FOR CREATION OF TRUST. The following persons may apply for the creation of a trust under this subchapter:

- (1) the guardian of a ward;
- (2) an attorney ad litem or guardian ad litem appointed to represent a ward or the ward's interests;
- (3) a person interested in the welfare of an alleged incapacitated person who does not have a guardian;
- (4) an attorney ad litem or guardian ad litem appointed to represent an alleged incapacitated person who does not have a guardian; or
- (5) a person who has only a physical disability.

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.060, eff. January 1, 2014.

Sec. 1301.0511. NOTICE REQUIRED FOR APPLICATION FOR CREATION OF TRUST; CITATION OF APPLICANT NOT REQUIRED. (a) On the filing of an application for creation of a management trust and except as provided by Subsection (d), notice shall be issued and served in the manner provided by Subchapter C, Chapter 1051, for the issuance and service of notice on the filing of an application for guardianship.

(b) It is not necessary to serve a citation on a person who files an application for the creation of a management trust under this subchapter or for that person to waive the issuance and personal service of citation.

(c) If the person for whom an application for creation of a management trust is filed is a ward, the sheriff or other officer, in addition to serving the persons described by Section 1051.103, shall personally serve each guardian of the ward with citation to appear and answer the application.

(d) Notice under this section is not required if a proceeding for the appointment of a guardian is pending for the person for whom an application for creation of a management trust is filed.

Added by Acts 2021, 87th Leg., R.S., Ch. 521 (S.B. 626), Sec. 60, eff. September 1, 2021.

Sec. 1301.052. VENUE FOR PROCEEDING INVOLVING TRUST FOR AN ALLEGED INCAPACITATED PERSON. (a) An application for the creation of a trust under Section 1301.054 for an alleged incapacitated person must be filed in the same court in which a proceeding for the appointment of a guardian for the person is pending, if any.

(b) If a proceeding for the appointment of a guardian for an alleged incapacitated person is not pending on the date an application is filed for the creation of a trust under Section 1301.054 for the person, venue for a proceeding to create a trust must be determined in the same manner as venue for a proceeding for the appointment of a guardian is determined under Section 1023.001.

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.061, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 982 (H.B. 2080), Sec. 25, eff. January 1, 2014.

Sec. 1301.053. CREATION OF TRUST. (a) On application by an appropriate person as provided by Section 1301.051 and subject to Section 1301.054(a), if applicable, the court with jurisdiction over the proceedings may enter an order that creates a trust for the management of the funds of the person with respect to whom the application is filed if the court finds that the creation of the trust is in the person's best interests.

(b) The court may maintain a trust created under this section under the same cause number as the guardianship proceeding, if the person for whom the trust is created is a ward or 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. 161 (S.B. 1093), Sec. 6.062, eff. January 1, 2014.

Sec. 1301.054. CREATION OF TRUST FOR INCAPACITATED PERSON WITHOUT GUARDIAN. (a) On application by an appropriate person as provided by Section 1301.051 and regardless of whether an application for guardianship has been filed on the alleged incapacitated person's behalf, a proper court exercising probate jurisdiction may enter an order that creates a trust for the management of the estate of an alleged incapacitated person who does not have a guardian if the court, after a hearing, finds that:

- (1) the person is an incapacitated person; and
- (2) the creation of the trust is in the incapacitated person's best interests.

(b) The court shall conduct the hearing to determine

incapacity under Subsection (a) using the same procedures and evidentiary standards as are required in a hearing for the appointment of a guardian for a proposed ward.

(c) Except as provided by Subsection (c-1), the court shall appoint an attorney ad litem and, if necessary, may appoint a guardian ad litem, to represent the interests of the alleged incapacitated person in the hearing to determine incapacity under Subsection (a).

(c-1) If the application for the creation of the trust is filed by a person who has only a physical disability, the court may, but is not required to, appoint an attorney ad litem or guardian ad litem to represent the interests of the person in the hearing to determine incapacity under Subsection (a).

(d) The court may maintain a trust created under this section under the same cause number as the guardianship proceeding, if the person for whom the trust is created is a ward or 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. 161 (S.B. [1093](#)), Sec. 6.063, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 982 (H.B. [2080](#)), Sec. 26, eff. January 1, 2014.

Sec. 1301.055. AUTHORITY OF COURT TO APPOINT GUARDIAN INSTEAD OF CREATING TRUST. If, after a hearing under Section [1301.054](#), the court finds that the person for whom the application was filed is an incapacitated person but that it is not in the incapacitated person's best interests for the court to create a trust under this subchapter for the incapacitated person's estate, the court may appoint a guardian of the person or estate, or both, for the incapacitated person without commencing a separate proceeding for that purpose.

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. 27, eff. January 1, 2014.

Sec. 1301.056. CONTENTS OF ORDER CREATING TRUST. An order creating a management trust must:

(1) direct any person or entity holding property that belongs to the person for whom the trust is created or to which that person is entitled to deliver all or part of that property to a person or corporate fiduciary appointed as trustee of the trust; and

(2) include terms and limitations placed on the trust. Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.064, eff. January 1, 2014.

Sec. 1301.057. APPOINTMENT OF TRUSTEE. (a) In this section, "financial institution" means a financial institution, as defined by Section 201.101, Finance Code, that has trust powers and exists and does business under the laws of this state, another state, or the United States.

(b) Except as provided by Subsection (c), the court shall appoint a financial institution to serve as trustee of a management trust, other than a management trust created for a person who has only a physical disability.

(c) The court may appoint a person or entity described by Subsection (d) to serve as trustee of a management trust created for a ward or incapacitated person instead of appointing a financial institution to serve in that capacity if the court finds:

(1) that the appointment is in the best interests of the ward or incapacitated person for whom the trust is created; and

(2) if the value of the trust's principal is more than \$150,000, that the applicant for the creation of the trust, after the exercise of due diligence, has been unable to find a financial institution in the geographic area willing to serve as trustee.

(d) The following are eligible for appointment as trustee of

a management trust created for a ward or incapacitated person under Subsection (c):

(1) an individual, including an individual who is certified as a private professional guardian;

(2) a nonprofit corporation qualified to serve as a guardian; and

(3) a guardianship program.

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. 28, eff. January 1, 2014.

Sec. 1301.058. BOND REQUIREMENTS FOR TRUSTEES. (a) The following serve without giving a bond in accordance with the trust terms required by Sections 1301.101(a)(4) and (a-1):

(1) a trustee of a management trust that is a corporate fiduciary; and

(2) any other trustee of a management trust created for a person who has only a physical disability.

(b) Except as provided by Subsection (a), the court shall require a person serving as trustee of a management trust to file with the county clerk a bond that:

(1) is in an amount equal to the value of the trust's principal and projected annual income; and

(2) meets the conditions the court determines are necessary.

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. 29, eff. January 1, 2014.

SUBCHAPTER C. TERMS OF MANAGEMENT TRUST

Sec. 1301.101. REQUIRED TERMS. (a) Except as provided by Subsection (c), a management trust created for a ward or

incapacitated person must provide that:

(1) the ward or incapacitated person is the sole beneficiary of the trust;

(2) the trustee may disburse an amount of the trust's principal or income as the trustee determines is necessary to spend for the health, education, maintenance, or support of the person for whom the trust is created;

(3) the trust income that the trustee does not disburse under Subdivision (2) must be added to the trust principal;

(4) a trustee that is a corporate fiduciary serves without giving a bond;

(5) subject to the court's approval and Subsection (b), a trustee is entitled to receive reasonable compensation for services the trustee provides to the person for whom the trust is created as the person's trustee; and

(6) the trust terminates:

(A) except as provided by Paragraph (B), if the person for whom the trust is created is a minor:

(i) on the earlier of:

(a) the person's death; or

(b) the person's 18th birthday; or

(ii) on the date provided by court order, which may not be later than the person's 25th birthday;

(B) if the person for whom the trust is created is a minor and is also incapacitated for a reason other than being a minor:

(i) on the person's death; or

(ii) when the person regains capacity; or

(C) if the person for whom the trust is created is not a minor:

(i) according to the terms of the trust;

(ii) on the date the court determines that continuing the trust is no longer in the person's best interests, subject to Section [1301.202\(c\)](#); or

(iii) on the person's death.

(a-1) A management trust created for a person who has only a

physical disability must provide that the trustee of the trust:

(1) serves without giving a bond; and

(2) is entitled to receive, without the court's approval, reasonable compensation for services the trustee provides to the person as the person's trustee.

(b) A trustee's compensation under Subsection (a)(5) must be:

(1) paid from the management trust's income, principal, or both; and

(2) determined, paid, reduced, and eliminated in the same manner as compensation of a guardian under Subchapter A, Chapter 1155.

(c) The court creating or modifying a management trust may omit or modify otherwise applicable terms required by Subsection (a), (a-1), or (b) if the court is creating the trust for a person who has only a physical disability, or if the court determines that the omission or modification:

(1) is necessary and appropriate for the person for whom the trust is created to be eligible to receive public benefits or assistance under a state or federal program that is not otherwise available to the person; or

(2) is in the best interests of the person for whom the trust is created.

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. 30, eff. January 1, 2014.

Acts 2021, 87th Leg., R.S., Ch. 521 (S.B. 626), Sec. 61, eff. September 1, 2021.

Sec. 1301.102. OPTIONAL TERMS. (a) A management trust created for a ward or incapacitated person may provide that the trustee make a distribution, payment, use, or application of trust funds for the health, education, maintenance, or support of the person for whom the trust is created or of another person whom the person for whom the trust is created is legally obligated to

support:

(1) as necessary and without the intervention of:

(A) a guardian or other representative of the ward; or

(B) a representative of the incapacitated person; and

(2) to:

(A) the ward's guardian;

(B) a person who has physical custody of the person for whom the trust is created or of another person whom the person for whom the trust is created is legally obligated to support; or

(C) a person providing a good or service to the person for whom the trust is created or to another person whom the person for whom the trust is created is legally obligated to support.

(b) The court may include additional provisions in a management trust on the trust's creation or modification under this chapter if the court determines the addition does not conflict with Section [1301.101](#).

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. 31, eff. January 1, 2014.

Sec. 1301.103. ENFORCEABILITY OF CERTAIN TERMS. A provision in a management trust created for a ward or incapacitated person that relieves a trustee from a duty or liability imposed by this chapter or Subtitle B, Title 9, Property Code, is enforceable only if:

(1) the provision is limited to specific facts and circumstances unique to the property of that trust and is not applicable generally to the trust; and

(2) the court creating or modifying the trust makes a specific finding that there is clear and convincing evidence that the inclusion of the provision is in the best interests of the trust

beneficiary.

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. 32, eff. January 1, 2014.

SUBCHAPTER D. ADMINISTRATION OF MANAGEMENT TRUSTS

Sec. 1301.151. JURISDICTION OVER TRUST MATTERS. A court that creates a management trust has the same jurisdiction to hear matters relating to the trust as the court has with respect to guardianship and other matters covered by this title.

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

Sec. 1301.152. COURT'S AUTHORITY TO DISCHARGE GUARDIAN OF ESTATE. On or at any time after the creation of a management trust, the court may discharge the guardian of the ward's estate if the court determines that the discharge is in the ward's best interests.

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

Sec. 1301.153. INVESTMENT IN TEXAS TOMORROW FUND. The trustee of a management trust may invest trust funds in the Texas tomorrow fund established by Subchapter F, Chapter 54, Education Code, if the trustee determines that investment is in the best interest of the ward or incapacitated person for whom the trust is created.

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

Sec. 1301.1535. INITIAL ACCOUNTING BY CERTAIN TRUSTEES REQUIRED. (a) This section applies only to a trustee of a management trust created for a person who on the date the trust is created is:

(1) a ward under an existing guardianship; or

(2) a proposed ward with respect to whom an application for guardianship has been filed and is pending.

(b) Not later than the 30th day after the date a trustee to which this section applies receives property into the trust, the trustee shall file with the court that created the guardianship or the court in which the application for guardianship was filed a report describing all property held in the trust on the date of the report and specifying the value of the property on that date.

Added by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.068, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1031 (H.B. 1438), Sec. 25, eff. September 1, 2015.

Sec. 1301.154. ANNUAL ACCOUNTING. (a) The trustee of a management trust created for a ward shall prepare and file with the court an annual accounting of transactions in the trust in the same manner and form that is required of a guardian of the estate under this title.

(b) The trustee of a management trust created for a ward shall provide a copy of the annual account to each guardian of the ward.

(c) The annual account is subject to court review and approval in the same manner that is required of an annual account prepared by a guardian under this title.

(d) The court may not require a trustee of a trust created for a person who has only a physical disability to prepare and file with the court the annual accounting as described by Subsection (a).

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.069, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 982 (H.B. 2080), Sec. 33, eff. January 1, 2014.

Acts 2021, 87th Leg., R.S., Ch. 521 (S.B. 626), Sec. 62, eff. September 1, 2021.

Sec. 1301.155. APPOINTMENT OF SUCCESSOR TRUSTEE. The court may appoint a successor trustee if the trustee of a management trust resigns, becomes ineligible, or is removed.

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

Sec. 1301.156. LIABILITY OF CERTAIN PERSONS FOR CONDUCT OF TRUSTEE. The guardian of the person or of the estate of a ward for whom a management trust is created or the surety on the guardian's bond is not liable for an act or omission of the trustee of the trust.

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

SUBCHAPTER E. MODIFICATION, REVOCATION, OR TERMINATION OF MANAGEMENT TRUSTS

Sec. 1301.201. MODIFICATION OR REVOCATION OF TRUST.

(a) The court may modify or revoke a management trust at any time before the date of the trust's termination.

(b) The following may not revoke a management trust:

(1) the ward for whom the trust is created or the guardian of the ward's estate;

(2) the incapacitated person for whom the trust is created; or

(3) the person who has only a physical disability for whom the trust is created.

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.070, eff. January 1, 2014.

Sec. 1301.202. TRANSFER TO POOLED TRUST SUBACCOUNT.

(a) If the court determines that it is in the best interests of the person for whom a management trust is created, the court may order the transfer of all property in the management trust to a pooled trust subaccount established in accordance with Chapter 1302.

(a-1) For purposes of a proceeding to determine whether to transfer property from a management trust to a pooled trust subaccount, the court may, but is not required to, appoint an attorney ad litem or guardian ad litem to represent the interests of a person who has only a physical disability for whom the management trust was created.

(b) The transfer of property from the management trust to the pooled trust subaccount shall be treated as a continuation of the management trust and may not be treated as the establishment of a new trust for purposes of 42 U.S.C. Section 1396p(d)(4)(A) or (C) or otherwise for purposes of the management trust beneficiary's eligibility for medical assistance under Chapter 32, Human Resources Code.

(c) The court may not allow termination of the management trust from which property is transferred under this section until all of the property in the management trust has been transferred to the pooled trust subaccount.

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.071, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 982 (H.B. 2080), Sec. 34, eff. January 1, 2014.

Sec. 1301.203. TERMINATION OF TRUST. (a) Except as provided by Subsection (a-1), if the person for whom a management trust is created is a minor, the trust terminates on:

(1) the earlier of:

(A) the person's death; or

(B) the person's 18th birthday; or

(2) the date provided by court order, which may not be later than the person's 25th birthday.

(a-1) If the person for whom a management trust is created is a minor and is also incapacitated for a reason other than being a minor, the trust terminates:

- (1) on the person's death; or
- (2) when the person regains capacity.

(b) If the person for whom a management trust is created is not a minor, the trust terminates:

- (1) according to the terms of the trust;
- (2) on the date the court determines that continuing the trust is no longer in the person's best interests, subject to Section [1301.202\(c\)](#); or
- (3) on the person's death.

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 6.072, eff. January 1, 2014.

Acts 2021, 87th Leg., R.S., Ch. 521 (S.B. [626](#)), Sec. 63, eff. September 1, 2021.

Sec. 1301.204. DISTRIBUTION OF TRUST PROPERTY. (a) Unless otherwise provided by the court and except as provided by Subsection (b), the trustee of a management trust shall:

- (1) prepare a final account in the same form and manner that is required of a guardian under Sections [1204.101](#) and [1204.102](#); and

- (2) on court approval, distribute the principal or any undistributed income of the trust to:

- (A) the ward or incapacitated person when the trust terminates on the trust's own terms;

- (B) the successor trustee on appointment of a successor trustee; or

- (C) the representative of the deceased ward's or incapacitated person's estate on the ward's or incapacitated person's death.

(b) The court may not require a trustee of a trust created for a person who has only a physical disability to prepare and file

with the court a final account as described by Subsection (a)(1). The trustee shall distribute the principal and any undistributed income of the trust in the manner provided by Subsection (a)(2) for a trust the beneficiary of which is a ward or incapacitated person.

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 6.073, eff. January 1, 2014.