

ESTATES CODE

TITLE 3. GUARDIANSHIP AND RELATED PROCEDURES

SUBTITLE I. OTHER SPECIAL PROCEEDINGS AND SUBSTITUTES FOR
GUARDIANSHIP

CHAPTER 1353. MANAGEMENT AND CONTROL OF INCAPACITATED SPOUSE'S
PROPERTY

SUBCHAPTER A. APPOINTMENT OF COMMUNITY ADMINISTRATOR OR GUARDIAN
OF THE ESTATE

Sec. 1353.001. EFFECT OF SUBCHAPTER. (a) The manner in which community property is administered under this subchapter does not affect:

(1) the duties and obligations between spouses, including the duty to support the other spouse; and

(2) the rights of any creditor of either spouse.

(b) This subchapter does not partition community property between an incapacitated spouse and a spouse who is not incapacitated.

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

Sec. 1353.002. SPOUSE AS COMMUNITY ADMINISTRATOR.

(a) Except as provided by Section [1353.004](#), when a spouse is judicially declared to be incapacitated, the other spouse, in the capacity of surviving partner of the marital partnership, acquires full power to manage, control, and dispose of the entire community estate, including the part of the community estate that the incapacitated spouse legally has the power to manage in the absence of the incapacity, as community administrator without an administration.

(b) The spouse who is not incapacitated is presumed to be suitable and qualified to serve as community administrator.

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

Sec. 1353.003. APPOINTMENT OF GUARDIAN OF THE ESTATE TO

ADMINISTER SEPARATE PROPERTY. (a) Except as provided by Section 1353.004, when a spouse who owns separate property is judicially declared to be incapacitated, the court shall appoint the other spouse or another person or entity, in the order of precedence established under Subchapter C, Chapter 1104, as guardian of the estate to administer only the separate property of the incapacitated spouse.

(b) The qualification of a guardian of the estate of the separate property of an incapacitated spouse under Subsection (a) does not deprive the spouse who is not incapacitated of the right to manage, control, and dispose of the entire community estate 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. 1353.004. APPOINTMENT OF GUARDIAN OF THE ESTATE UNDER CERTAIN CIRCUMSTANCES. (a) This section applies only if:

(1) a spouse who is not incapacitated is removed as community administrator; or

(2) the court finds that the spouse who is not incapacitated:

(A) would be disqualified to serve as guardian under Subchapter H, Chapter 1104; or

(B) is not suitable to serve as the community administrator for any other reason.

(b) The court shall appoint a guardian of the estate for the incapacitated spouse if the court:

(1) has not appointed a guardian of the estate under Section 1353.003(a); or

(2) has appointed the spouse who is not incapacitated as the guardian of the estate under Section 1353.003(a).

(c) After considering the financial circumstances of the spouses and any other relevant factors, the court may order the spouse who is not incapacitated to deliver to the guardian of the estate of the incapacitated spouse not more than one-half of the community property that is subject to the spouses' joint management, control, and disposition under Section 3.102, Family

Code.

(d) The court shall authorize the guardian of the estate of the incapacitated spouse to administer:

- (1) any separate property of the incapacitated spouse;
- (2) any community property that is subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code;
- (3) any community property delivered to the guardian of the estate under Subsection (c); and
- (4) any income earned on property described by this section.

(e) Community property administered by a guardian of the estate under Subsection (d) is considered the incapacitated spouse's community property, subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code.

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

Sec. 1353.005. ADMINISTRATION OF CERTAIN PROPERTY BY NON-INCAPACITATED SPOUSE. (a) On a person's removal as community administrator or on qualification of a guardian of the estate of the person's incapacitated spouse under Section 1353.004, as appropriate, a spouse who is not incapacitated shall continue to administer:

- (1) the person's own separate property;
- (2) any community property that is subject to the person's sole management, control, and disposition under Section 3.102, Family Code;
- (3) either:
 - (A) any community property subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code; or
 - (B) if the person is required to deliver a portion of that community property described by Paragraph (A) to the guardian of the estate of the person's incapacitated spouse under Section 1353.004(c), only the portion of the community

property remaining after delivery; and

(4) any income earned on property described by this section the person is authorized to administer.

(b) Community property administered under this section by a spouse who is not incapacitated is considered that spouse's community property, subject to that spouse's sole management, control, and disposition under Section 3.102, Family Code.

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

Sec. 1353.006. EFFECT OF COURT ORDER ON CREDITORS' CLAIMS. A court order that directs the administration of community property under Section 1353.004 or 1353.005 does not affect the enforceability of a creditor's claim existing on the date the court renders the order.

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

SUBCHAPTER B. DUTIES OF COMMUNITY ADMINISTRATORS AND GUARDIANS OF THE ESTATE

Sec. 1353.051. INVENTORY AND APPRAISEMENT BY COMMUNITY ADMINISTRATOR. (a) On its own motion or on the motion of an interested person for good cause shown, the court may order a community administrator to file a verified, full, and detailed inventory and appraisal of:

(1) any community property that is subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code;

(2) any community property subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code; and

(3) any income earned on property described by this subsection.

(b) An inventory and appraisal ordered under this section must be:

(1) prepared in the same form and manner that is

required of a guardian under Section [1154.051](#); and

(2) filed not later than the 90th day after the date the order is issued.

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

Sec. 1353.052. ACCOUNT BY COMMUNITY ADMINISTRATOR. (a) At any time after the expiration of 15 months after the date a community administrator's spouse is judicially declared to be incapacitated, the court, on its own motion or on the motion of an interested person for good cause shown, may order the community administrator to prepare and file an account of:

(1) any community property that is subject to the incapacitated spouse's sole management, control, and disposition under Section [3.102](#), Family Code;

(2) any community property subject to the spouses' joint management, control, and disposition under Section [3.102](#), Family Code; and

(3) any income earned on property described by this subsection.

(b) An account ordered under Subsection (a) must be:

(1) prepared in the same form and manner that is required of a guardian under Subchapter A, Chapter [1163](#), except that the community administrator is not required to file the account annually with the county clerk; and

(2) filed not later than the 60th day after the date the order is issued.

(c) After an initial account has been filed by a community administrator under this section, the court, on the motion of an interested person for good cause shown, may order the community administrator to file subsequent periodic accounts at intervals of not less than 12 months.

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

Sec. 1353.053. DISCLOSURE OF CERTAIN LAWSUITS TO THE COURT BY COMMUNITY ADMINISTRATOR. A person whose spouse is judicially

declared to be incapacitated and who acquires the power to manage, control, and dispose of the entire community estate under Section [1353.002](#)(a) shall inform the court in writing of any suit filed by or on behalf of the person that:

(1) is a suit for dissolution of the marriage of the person and the person's incapacitated spouse; or

(2) names the incapacitated spouse as a defendant.

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

Sec. 1353.054. DELIVERY OF COMMUNITY PROPERTY BY GUARDIAN OF THE ESTATE TO COMMUNITY ADMINISTRATOR. A guardian of the estate of an incapacitated married person who, as guardian, is administering community property as part of the ward's estate, shall deliver on demand the community property to the spouse who is not incapacitated if the spouse becomes community administrator under Section [1353.002](#)(a).

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

SUBCHAPTER C. REMOVAL OR TERMINATION OF POWERS OF COMMUNITY ADMINISTRATOR

Sec. 1353.101. GROUNDS FOR REMOVAL OF COMMUNITY ADMINISTRATOR. A court may remove a community administrator if:

(1) the community administrator fails to comply with a court order for:

(A) an inventory and appraisal under Section [1353.051](#); or

(B) an account or subsequent account under Section [1353.052](#);

(2) sufficient grounds appear to support belief that the community administrator has misapplied or embezzled, or is about to misapply or embezzle, all or part of the property committed to the community administrator's care;

(3) the community administrator is proved to have been guilty of gross misconduct or gross mismanagement in the

performance of duties as community administrator; or

(4) the community administrator:

(A) becomes an incapacitated person;

(B) is sentenced to the penitentiary; or

(C) for any other reason becomes legally incapacitated from properly performing the community administrator's fiduciary duties.

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

Sec. 1353.102. PROCEDURE FOR REMOVAL OF COMMUNITY ADMINISTRATOR. (a) A court may remove a community administrator on the court's own motion or on the motion of an interested person, after the community administrator has been cited by personal service to answer at a time and place specified in the notice.

(b) The removal order must:

(1) state the cause of removal; and

(2) direct the disposition of the assets remaining in the name or under the control of the removed community administrator.

(c) A community administrator who defends an action for the removal of the community administrator in good faith, regardless of whether successful, is entitled to recover from the incapacitated spouse's part of the community estate the community administrator's necessary expenses and disbursements in the removal proceedings, including reasonable attorney's fees.

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

Sec. 1353.103. TERMINATION OF COMMUNITY ADMINISTRATOR'S POWERS ON RECOVERY OF CAPACITY. The special powers of management, control, and disposition vested in the community administrator by this title terminate when a court of competent jurisdiction by decree finds that the mental capacity of the incapacitated spouse has been recovered.

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

SUBCHAPTER D. APPOINTMENT OF ATTORNEY AD LITEM

Sec. 1353.151. APPOINTMENT OF ATTORNEY AD LITEM FOR INCAPACITATED SPOUSE. (a) The court shall appoint an attorney ad litem to represent the interests of an incapacitated spouse in a proceeding to remove a community administrator or other proceeding brought under this chapter.

(b) The attorney ad litem may demand from the community administrator an account or inventory and appraisement of the incapacitated spouse's part of the community estate being managed by the community administrator.

(c) A community administrator shall comply with a demand made under this section not later than the 60th day after the date the community administrator receives the demand.

(d) An account or inventory and appraisement returned under this section must be prepared in the form and manner required by the attorney ad litem. The attorney ad litem may require the community administrator to file the account or inventory and appraisement with the court.

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