2022 Checklist for Adult Guardianship

**Texas Estates Code - Title 3. Guardianship and Related Procedures**

# Court Initiated Procedure

Does Court have probable cause to believe a county constituent is incapacitated?

(Estates Code: 1102.001)

Does Court have probable cause to believe that such person has no guardian?

Court may require an information letter from the interested person.

(Estates Code: 1102.002 & .003)

Court may require a certificate from a physician who has examined the person.

If Court has probable cause, Court shall appoint a Guardian Ad Litem (GAL) or Court

Investigator. (Estates Code: 1102.001)

GAL or Court Investigator may file a guardianship application if necessary.

(Estates Code: 1102.004)

GAL may be paid from the Proposed Ward's Estate or Management Trust.

(Estates Code: 1102.005)

Fees may be paid from each county's court-initiated guardianship fund.

(Local Government Code: 118.067)

# Application

Any person (unless having an adverse interest) may file an Application.

(Estates Code: 1101.001, 1055.001)

Is attorney for Applicant certified to file a guardianship application?

(Estates Code: 1054.201)

Has Applicant passed a criminal background check?

(Estates Code: 1104.402)

 Does the Application address alternatives or support/services?

 (Estates Code: 1101.001)

 Does the Application address Proposed Ward's right to drive, vote and choose residence?

 Did Applicant deposit funds into Registry to pay cost of Attorney Ad Litem?

 Currently not necessary for most Fort Bend County Courts. (Estates Code: 1053.052)

 Does the Court have jurisdiction? (Estates Code: 1022)

 Does the Court have venue? County where Proposed Ward resides or is located.

 (Estates Code: 1023.001)

 Did the County Clerk post required Citation?

 (Estates Code: 1051.102)

 Did the Sheriff (officer) personally serve the Proposed Ward 12 years of age or older?

 (Estates Code: 1051.103)

 Proposed Ward cannot waive service. (Estates Code: 1051.105)

 Was Application filed with Certificate of Medical Exam (Physician’s Form

Letter with clear statement as to whether partial or complete incapacity exist within the 120 days (4 months) of filed application?

(Estates Code: 1101.103)

 Was Application filed with determination of intellectual disability within 24

 months (2 years)? (Estates Code: 1101.104)

 Was Application filed with Motion for Independent Medical Exam?

 [Estates Code: 1101.103(c)]

 Did Applicants filing Counter-Applications for Guardianship first file Motions to

 Intervene? (Estates Code: 1055.003)

\_ Is Counter-Applicant with adverse relationship to Proposed Ward to unduly prejudice

 adjudication?

**Appointment of Ad Litems**

Did the Court appoint a certified attorney ad litem to represent wishes of the

Proposed Ward? (Estates Code: 1054.001)

Did Attorney Ad Litem file an answer?

Did Attorney Ad Litem perform the statutory duties? (Estates Code: 1054.004)

Did the Ad Litem contest the guardianship?

If Contested filed, should Guardianship be assigned to a different court?

\* *Only applies to counties with no Statutory Probate Court or County Court at Law*

(Estates Code: 1022.003

If Contested, should Court appoint a Guardian Ad Litem to argue for Proposed Ward's

best interests? (Estates Code: 1054.051)

Did the Guardian Ad Litem file a report?

[Estates Code: 1054.054(d)]

**File Review Prior to Hearing**

Were Proposed Ward's parents personally served or have they filed waivers?

(Estates Code: 1051.103, 1051.105)

Was the Conservator or person having care and control of Proposed Ward served or file waivers?

Was the Proposed Ward's spouse served or file a waiver?

If Proposed Guardian is not Applicant, was Proposed Guardian personally served?

Did Applicant send by Certified Mail with a Return Receipt (CMRR) a copy of the Application for Guardianship and Notice to each adult child and each adult sibling of the Proposed Ward?

(Estates Code: 1051.104)

Did Applicant send by CMRR the Application for Guardianship and Notice to the Residential Care Provider?

 Did Applicant have personal service issued, served and returned upon the Proposed

 Ward?

 Did Applicant have personal service issued, served and returned upon the person

 designated to serve as Guardian in a Probated Will of a parent of the Proposed Ward?

 If no spouse, parent, child or sibling of Proposed Ward, did Applicant have personal

 service issued, served and returned upon the third degree consanguinity?

 Did Applicant file an Affidavit with proof of delivery of the notices given/served?

 Have 10 days (+ next Monday) passed since Proposed Ward parents, spouse, children

 served? (Estates Code:1051.106)

 Has only one person applied to be appointed Guardian of the Person or Estate?

 (Estates Code: 1104.001)

 Only one person may be Guardian of the Person and a separate one may be Guardian of the

 Estate upon qualification.

 Two people may not be Guardian of the Person or Guardian of the Estate unless they are

 the natural parents married or appointed managing conservators.

 Court to make reasonable effort to consider Proposed Ward's preference as to whom

 to select as Guardian. (Estates Code: 1104.002)

 Did Proposed Ward have a prepared Declaration of Guardian in case of Incapacity?

 (Estates Code: 1104.202)

 Did the Declaration of Guardian disqualify any of the Applicants from serving?

 Is person to be appointed as Guardian disqualified, unsuitable, bad, or conflicted?

 (Estates Code: 1104.351-.354)

 Has anyone filed a Motion in Limine to determine the standing to apply or contest?

 (Estates Code: 1055.001)

 Hearing required as Applications for Guardianship may not be considered by

 submission. (Estates Code: 1055.051)

Has anyone requested a hearing at a location other than the courthouse?

(Estates Code: 1055.053)

Has the Proposed Ward or the Attorney Ad Litem requested a hearing at courthouse?

Has anyone requested, or does the court wish to order Mediation of a Contest?

(Estates Code: 1055.151)

# Hearing

Has anyone requested and paid for a Jury Trial?

(Estates Code: 1101.052)

If the Proposed Ward is not present at the hearing, has the Court determined presence is unnecessary and excused their presence?

(Estates Code: 1101.051)

Have relevant medical records been provided to Attorney Ad Litem?

(Estates Code: 1101.053)

If not, will Court make a finding that such records do not exist and Proposed Ward’s exam impractical?

Findings in medical, psychological and intellectual records are not binding on Court.

Did Applicant admit a certificate from a Texas physician dated within 120 days of Application?

 (Estates Code: 1101.103)

If intellectual disability, is letter by psychologist who exams Proposed Ward within 24 months of hearing?

(Estates Code: 1101.104)

Did Applicant show evidence of recurring acts within 6 months showing incapacity?

(Estates Code: 1101.102)

Can you find by clear/convincing evidence (CCE) that Proposed Ward is an "incapacitated person?"

(Estates Code: 1101.101)

 Can you find by clear/convincing evidence (CCE) that it is in Proposed Ward's best

 interests to have Court appoint a Guardian?

 Can you find by clear/convincing evidence (CCE) that the Proposed Ward's rights or

 property will be protected by guardian?

 Can you find by clear/convincing evidence (CCE) that alternatives have been

 considered and not feasible?

 Can you find by clear/convincing evidence (CCE) that available supports/services have

 been considered and not feasible?

\_\_\_ Can you find by preponderance of evidence (PE) that the Court has venue?

 Can you find by preponderance of evidence (PE) that Applicant or individual to be

appointed as Guardian is eligible to act?

\_\_\_ Is the Proposed Ward totally without capacity to care for himself/manage property?

 \_\_ Or, does Proposed Ward lack the capacity to do some, but not all, tasks to care for

 himself/manage property?

\_\_ ­­ If partial, does Proposed Ward lack capacity for decisions on residence, voting, driving

 and marriage?

# Guardianship Order with Full Authority

 \_\_ If totally without capacity then right to drive, choose residence, and to vote removed.

 (Estates Code: 1101.151)

 \_\_ Does the Order state that the guardian has "full authority" over the person and/or

 estate?

\_\_\_ Does Order include necessary findings of fact stated above?

 \_\_\_ Does Order state whether the person is totally incapacitated because of a mental

 condition?

\_\_\_ Does Order state the name of Guardian, name of Ward, whether it is Guardian of the

Person Only or Guardian of the Estate Only or Guardian of the Person and Estate?

(Estates Code 1101.153)

Does Order remove right to drive, vote and choose residence?

(Estates Code: 1101.151)

Does the Order set a monthly allowance for education and maintenance of Proposed Ward?

Does Order address rights given by Bill of Rights that should be removed?

(Estates Code: 1151.351

Does Order direct County Clerk to issue Letters of Guardianship to the Guardian upon qualification?

Does a Guardian of the Person Order contain the Notice to Peace Officer in bold printed letters?

Does Order set the amount of bond required?

(Estates Code: 1101.153)

Court may not waive bond for a Guardian of the Estate.

[Estates Code: 1105.101(d)]

Bond is not required if Guardian is Corporate Fiduciary (Trust) or Guardianship Program operated by a county.

[Estates Code: 1105.101(b)(1)(2)]

Court to set corporate bond of Guardian of the Estate in amount of Proposed Wards personalty plus income for 1 year.

(Estates Code: 1105.154)

Court may accept personal surety bond for a Guardian of the Person.

(Estate’s Code: 1105.102)

# Guardianship Order with Limited Authority

If Proposed Ward lacks capacity to do some, but not all, tasks necessary then limited authority. (Estates Code: 1101.152)

Does Order include necessary findings of fact stated above?

Does Order state whether the person is totally incapacitated because of a mental condition?

Does Order state name of Guardian, name of Ward, whether it is Guardian of the Person Only or Guardian of the Estate Only or Guardian of the Person and Estate?

(Estates Code 1101.153)

Does Order set the amount of bond required? (See sections mentioned above)

Does the Order include the specific powers of the Guardian?

(Estates Code: 1101.152)

Does the Order include the specific rights retained by the person **with** Supports and Services?

Does the Order include the specific rights retained by the person ***without*** Supports and Services?

Does the Order include a Monthly Allowance for the Education and Maintenance of the person?

Does the Order state whether the person retains the right to choose a residence?

Does the Order state whether the person retains the right to vote?

Does the Order state whether the person retains the right to drive a motor vehicle?

Does the Order address any of the Bill of Rights that should be removed?

(Estates Code: 1151.351)

Does the Guardian of the Person Order include the Notice to Peace Officers in bold printed letters?

**Letters of Guardianship**

Does the bond filed comply with the Court's Order?

Has the Court approved the bond?

(Estates Code: 1105.110)

Has the Guardian filed an Oath?

(Estates Code: 1105.051)

Has the County Clerk issued Letters of Guardianship to the Guardian?

(Estates Code: 1106.001)

Letters of Guardianship expire one year and four months after issued unless renewed.

\* *Guardianship does not terminate; however, Letters do expire*.

(Estates Code: 1106.002)

Letters of Guardianship of Person cannot be renewed unless court approves the Guardian of the Person Annual Report on Condition, Location and Well-Being of Ward.

(Estates Code: 1106.003)

Letter of Guardianship of Estate cannot be renewed unless Court approves the Annual Accounting.

**Inventory, Appraisement** & **List of Claims**

Inventories are due within 30 days after a Guardian of an Estate qualifies.

(Estates Code: 1154.051)

Has Guardian of the Estate filed a sworn inventory?

Does the inventory show that the bond is adequate or should be increased or decreased?

Court should examine and approve the inventory or request that the Guardian of the Estate amend it to fix errors and omissions.

(Estates Code: 1154.054)

Should Court consider removing Guardian **without notice** for failure to qualify and/or file inventory?

(Estates Code: 1203.051)