

THE STATE BAR OF TEXAS
TEXAS YOUNG LAWYERS ASSOCIATION

GUARDIANSHIP GUIDE



Serving as guardian is a serious job. Your fiduciary duties to the ward and the Court last until you are discharged and released by the Court, and this may go on even past the death of the Ward. Failure to comply with your duties and obligations could lead to your removal. You could then be liable civilly or potentially even criminally for your actions. Thus, do not take this job lightly and make sure you discuss any questions you may have with an attorney.

GETTING STARTED AS GUARDIAN

The Oath and Bond

Once you receive the Order appointing you as guardian of the person and/or guardian of the estate, you still need to “qualify” as the guardian. To qualify, you must sign and notarize an “Oath of Office” and secure a bond. A bond is a written obligation with a monetary penalty, which insures the proper performance of the guardian’s duties to the ward. The Court may require a corporate surety bond, a personal surety bond, or a cash bond. You must secure a bond in the amount specified by the court’s Order.

If you do not file both your oath and your bond within twenty days, the Court may set aside your appointment. It is important to remember your “qualification date” as many of your duties must be performed within a certain number of days from your qualification as guardian of the person.

Obtaining Letters of Guardianship

After you have qualified, you may request your Letters of Guardianship (“Letters”) from the county clerk’s office. The Letters are an official document that serves as evidence of your appointment as guardian. The Letters expire each year and must be renewed annually in conjunction with the filing of your Annual Report and/or Annual Accounting.

GUARDIANSHIP of the PERSON

Duties and Powers of the Guardian of the Person

Your powers as guardian are listed in the order appointing you as permanent guardian. There may be other powers listed in the order, but the Texas Estates Code grants many duties; some are listed below:

- (1) Take charge of the person of the Ward;
- (2) Have physical possession of the Ward and establish the Ward's legal domicile (residence);
- (3) Provide the Ward with clothing, food, medical care, and shelter;
- (4) Consent to medical, psychiatric, and surgical treatment other than the inpatient psychiatric commitment of the Ward;
- (5) Make employment, academic, and educational decisions for the ward;
- (6) Apply on the Ward's behalf for government benefits and services.

Alternatively, there are a few powers that you can exercise only with a court order, and some of them include the following:

- (1) Place the Ward in a more restrictive care facility;
- (2) Spend funds of the guardianship to care and maintain the Ward;

As guardian of the person, you will continue to have duties and obligations to the court for the duration of the guardianship. Unless the Court has alleviated you of this duty, you are required, as soon as practicable, to inform relatives if the Ward:

1. Dies. You must inform relatives of any funeral arrangements and the location of the Ward's final resting place;
2. Is admitted to a medical facility for acute care for a period of three days or more;
3. Changes residence; or
4. Stays at a location other than the Ward's residence for longer than one calendar week.

It is recommended that you discuss with an attorney any actions that you would like to take regarding the Ward before taking them if it involves moving the Ward, committing the Ward to an institution, or expending funds.

Annual Report

The guardian of the person is required to file a sworn annual report every year. Your annual report is due within sixty days of the anniversary of your qualification date. Failure to file the annual report could result in your removal as guardian, and/or a fine not to exceed \$1,000. You may file this report pro se (meaning you do not need to have a lawyer to file it with the Court). The annual report should include specific information, and you should contact the Court to see if they have a pro se form available.

Closing the Guardianship of the Person

The guardianship will be closed by the Court if a minor ward turns 18, the Ward dies, the Ward is declared by law to be restored to full capacity, the Ward no longer has the disability which required the guardianship, the Ward gets married, or the Court determines that a guardianship of the person is no longer necessary and the guardian is discharged.

If there is no longer a need to continue the guardianship, the guardian is required to file an application to terminate the guardianship and a final report. Any property the guardian is in possession or control of must be distributed to the Ward or the Ward's representative.

GUARDIANSHIP OF THE ESTATE

The guardian of the estate is responsible for the financial well-being of the Ward. As guardian of the estate, you have been appointed by the Court to handle the Ward's assets. The guardian of the estate has more duties and deadlines to meet than the guardian of the person.

Powers and Duties of the Guardian of the Estate

Take Possession of Estate Assets. You must take possession of all of the Ward's property, manage all the property, collect debts, rentals, and claims that favor the Ward, and bring and defend suits by or against the Ward. All of the Ward's property should remain in Texas unless prior Court approval has been retained. Any cash that is received should be placed in a bank account in the name of the guardianship. The Ward's funds should

never be in your personal account. It is also important that all personal property of the Ward is segregated from your personal possessions.

Claims and Debts. You are required to use ordinary diligence to collect all claims and debts owed to the Ward and to recover possession of all property to which the Ward has claim or title, if there is a reasonable prospect of collecting the claims or recovering the property.

There are few actions that can be taken without Court approval. They include the power to:

- (1) Release a lien on payment at maturity of the debt secured by the lien;
- (2) Insure the estate against liability in appropriate cases;
- (3) Insure property of the estate against fire, theft, and other hazards; and
- (4) Pay taxes, court costs, and bond premiums.

All other actions taken by you as Guardian will require Court approval. Some common actions that require Court approval include:

- (1) Purchasing or selling property;
- (2) Making a compromise or settlement in relation to property or claim in dispute or litigation;
- (3) Purchasing a prepaid funeral benefits contract;
- (4) Expending funds for the education and maintenance of a Ward's spouse or dependents.

It is recommended that you discuss with an attorney any actions that you would like to take with regard to the estate prior to taking them if it involves expending funds without a Court order.

Obligations Within the First Year After Appointment.

Inventory, Appraisal, and List of Claims. This must be a detailed inventory of all the property that has come into your possession or knowledge. The inventory must include all real property of the Ward in the State of Texas, a listing of all personal property of the Ward, the fair market value of each item determined as of your qualification date, the assets of the Ward's estate that are community and separate property, and a detailed lists of all claims owned by the Ward. It must be filed within thirty days of the qualification date.

Allowance. If your order does not already provide for a monthly allowance, you must file an application requesting a monthly or annual allowance to be used from guardianship funds for the use and benefit of the Ward within thirty days of the qualification date.

Creditors. Within one month from the date of your qualification, a notice to the general creditors of the Ward's estate must be published. Within four months of receiving letters of guardianship, the guardian of the estate must give notice by certified or registered mail, with return receipt requested, of the issuance of the letters to each person who has a claim for money against the Ward's estate that is either secured against real estate belonging to the estate or about which the guardian has actual knowledge. A copy of each notice with the return receipt and the guardian's affidavit that the notice was mailed must be filed with the Court.

Within thirty days after the claim is presented to the guardian or filed with the clerk, the guardian of the estate must sign or attach to the claim a memorandum stating the date of presentation or filing of the complaint and whether the guardian allows or rejects the claim in whole or in part.

Texas law allows a guardian to mail a permissive notice to unsecured creditors. The notice must state that the creditor must present a claim within four months of the date of the receipt of the notice or the claim is barred. If the unsecured creditor fails to respond to the notice letter, then its claim will be barred.

Investment Plan. Within six months of qualifying as guardian of the estate, you must file an Application for Approval of an Investment Plan for the Ward's estate,

unless waived by the Court. You are not required to invest funds that are immediately necessary for the education, support, and maintenance of the Ward or others the Ward supports, but you do have a duty to keep the estate invested. You may invest in certain bonds and interest bearing time deposits that may be withdrawn on or before one year after demand if insured by the FDIC. Mutual funds, stocks, bonds of private companies, or similar type of investments with brokerage firms are not authorized investments and placing estate funds in such investments will result in violation of your duties and could result in removal. If the Ward already had these types of investments, you may ask the court to retain them.

Annual Accounting. The Annual Accounting is filed each year within sixty days after the anniversary of the guardian's date of qualification. Failure to file the annual accounting could result in your removal as guardian and an action against your bond. The information that must be included in an Annual Account is very specific and you should contact the Court to see if they have any pro se forms available. To make preparing this accounting easier, throughout the year keep bank statements, save any receipts for expenses the Ward's estate paid for, and create a spreadsheet or ledger of those expenses. In the Annual Accounting, you may also apply for compensation.

Closing the Guardianship of the Estate.

Requirements to Close the Guardianship. The guardianship of the estate must be settled and closed when a minor Ward turns 18, the Ward dies, the Ward is declared by law to be restored to full capacity, the Ward no longer has the disability which required the guardianship, the spouse of a married Ward has qualified to administer the community property and no separate property is owned by the Ward, the estate of the Ward is completely used, the foreseeable income accruing to the Ward or his estate is so little that maintaining the guardianship would be a burden, a management trust or pooled trust is created, or the Court determines that a guardianship of the Ward's estate is no longer necessary for any other reason.

Filing a Final Accounting. When the guardianship of

an estate is required to be settled and closed, the guardian of an estate must file a verified final account setting out very specific information.

Notice Requirement. Notice of filing the final accounting must be served upon a Ward who is at least 14 years old and a resident of Texas. If the Ward is deceased, the notice must be served on the personal representative. If the Ward's residence is unknown or the Ward isn't a Texas resident, notice must be served by publication unless the Court enters an order stating otherwise.

Court Action on the Account. After all notices are given in the manner required by law, the Court must audit, settle, or restate the account if necessary. The Court order must also provide for the distribution of any property remaining in the guardian's hands. When all of the steps have been completed, the Court may enter an order closing the estate, discharging the guardian, and releasing the guardian's bond.



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