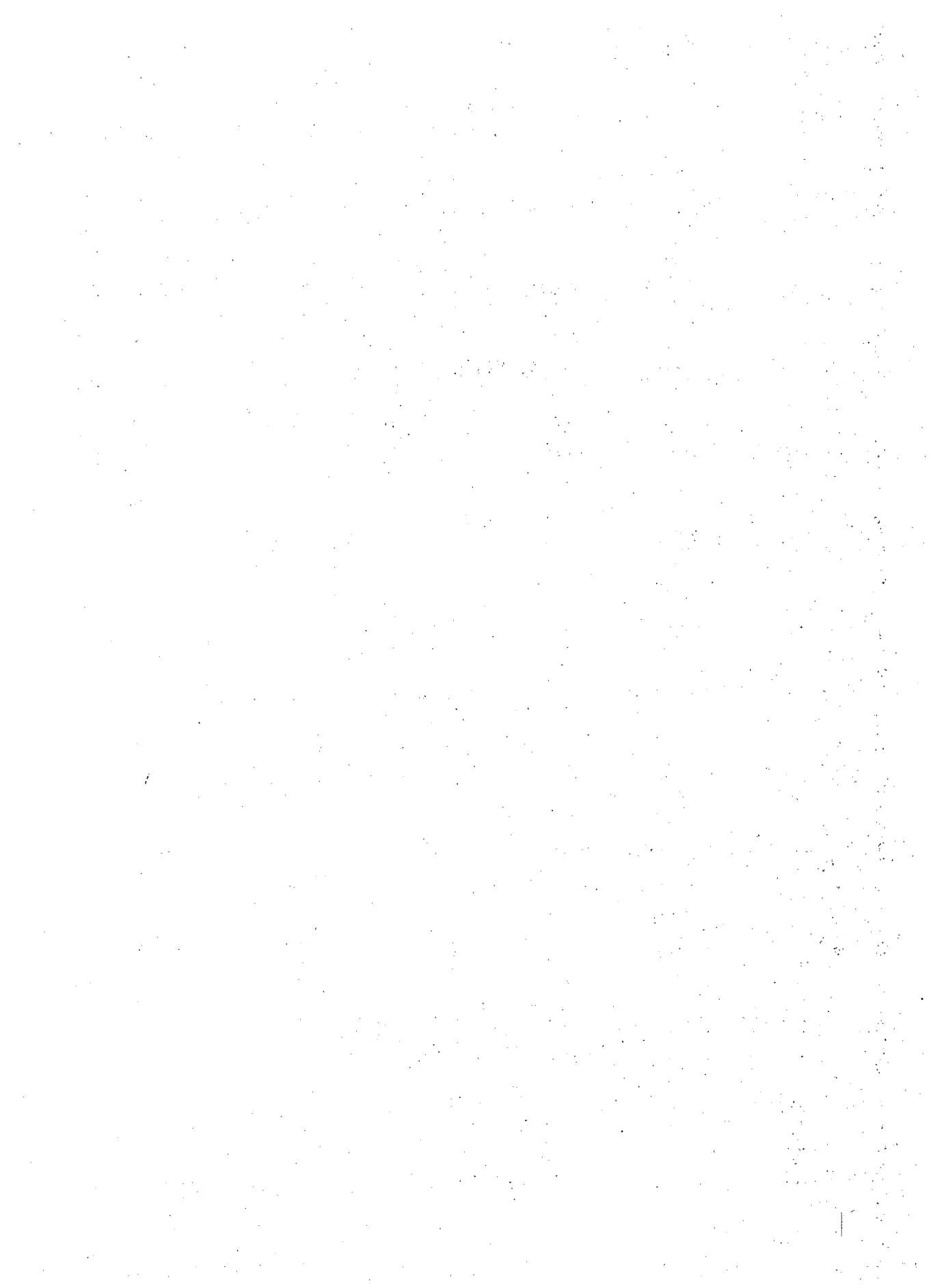


A ROAD MAP TO

GUARDIANSHIP ALTERNATIVES



**A Road Map
to Guardianship Alternatives**



A Road Map to Guardianship Alternatives



Austin 2012

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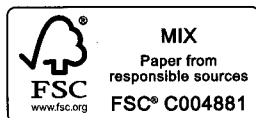
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The State Bar of Texas is very pleased to publish *A Road Map to Guardianship Alternatives*. With this guide, the State Bar hopes to support practitioners in every area by providing knowledgeable and cost-effective legal support to families making plans for financial and medical care.

The bar wishes to extend its sincere appreciation to the authors of this book, led by Sarah Patel Pacheco. Through their dedicated efforts the bar is able to provide this resource to assist Texas attorneys in providing the highest level of service to families in need. The committee's contributions exemplify the ideals of our profession and are to be commended.

A handwritten signature in black ink, appearing to read "Bob Black".

Bob Black
President, State Bar of Texas



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Preface

Texas guardianship proceedings can be intrusive, burdensome and costly. Practitioners should be aware of the many alternatives to guardianship that are available to Texas residents. This guide provides an overview of those alternatives, including specific forms that can be used to avoid a court-supervised administration of affairs. Great care should be taken to alter the forms to your particular situation.

This guide, previously published as *Contingency Planning: The Texas Practitioner's Guide to Powers of Attorney and Other Alternatives to Guardianship*, has been expanded to include additional resources to assist with avoiding an unnecessary guardianship and updated to reflect legislative changes that have occurred since the previous publication. These changes will serve to improve this valuable resource for Texas attorneys.

This Committee appreciates the contributions of the Real Estate Forms Committee in providing the special durable power of attorney for real estate transactions. If you have suggestions or an alternative to a guardianship proceeding that is not covered by this guide, please contact TexasBarBooks at the State Bar of Texas with your suggestions.

Sarah Patel Pacheco, *Chair*

**A Road Map
to Guardianship Alternatives**

A Road Map to Guardianship Alternatives

§ 1 Scope of Book

This book contains a discussion of various tools that may be used when one is caring for a minor or a person with infirmities or illness or when managing the affairs of someone who is unavailable to make decisions for other reasons. The Texas Disciplinary Rules of Professional Conduct require an attorney to “take reasonable action to secure the appointment of a guardian or other legal representative for, or seek other protective orders with respect to, a client whenever the lawyer reasonably believes that the client lacks legal competence and that such action should be taken to protect the client.” Tex. Disciplinary Rules Prof’l Conduct R. 1.02(g). However, there are many situations in which the time and expense of creating a guardianship is not in the best interests of the client. Events that may be anticipated, such as travel or planned surgery, may be addressed with a number of tools that allow a family to manage their affairs without interruption. Assets belonging to minors or the infirm may be administered in a number of ways, depending on the circumstances, without the appointment of a guardian of the estate. This volume is designed to help the attorney aid the client in addressing these types of situations in a timely and cost-efficient manner.

§ 2 Bank Accounts

A joint account established in the name of the client, before incapacity, and the name of one or more responsible individuals will permit one person to write checks on or withdraw funds from another’s checking or savings account. Tex. Prob. Code §§ 436–450. A “convenience account,” which permits the cosignatories to draw off the account during the depositor’s life to benefit the depositor or to pay his obligations, may also be considered. Tex. Prob. Code § 438A. Under this option, the convenience signer has no ownership rights in the account, before or after the death of the depositor, nor does the convenience signer have any right to pledge the assets of the account.

Convenience signers may also be added to other multi-party accounts, such as joint tenancy with right of survivorship, pay-on-death, or trust accounts, without granting ownership rights to the convenience signer. Tex. Prob. Code § 438B.

§ 3 **Appointment of Representative Payee for Receipt of Social Security Benefits**

Many elderly and disabled persons receive Security Retirement Income or Supplemental Security Income (SSI) benefits. The Social Security Administration provides for the appointment of a “representative payee” to receive the appropriate benefits on behalf of the retired or disabled person if that person is unable to process or manage the funds. *See* 42 U.S.C. § 1383(a)(2); 20 C.F.R. §§ 416.601–.665. No legal determination of incapacity is required. 20 C.F.R. § 416.601.

The power of a court-appointed guardian of the estate to receive and manage these benefits is subordinate to that of a representative payee. The Social Security Administration may deny a court-appointed guardian of the estate the right to receive the ward’s SSI and retirement benefits and may appoint another individual as representative payee.

If guardianship is needed only because the disabled person cannot process or manage a retirement or SSI check, guardianship may be avoided by having a representative payee appointed. The local Social Security Administration office can provide application forms and further information about the retirement or SSI program.

§ 4 **Guardianship of Veterans and Dependents**

§ 4.1 **Introduction**

When administering a guardianship estate for an incapacitated veteran or dependent of a veteran who receives funds from the Department of Veterans Affairs (VA), the guardian should be aware of the authority and right of the VA to participate in various guardianship matters.

§ 4.2 **Authority**

The authority of the Department of Veterans Affairs is generally stated in 38 C.F.R. §§ 13.1–.111, which includes citations to the applicable United States Code sections.

§ 4.3 **Recipient of Funds**

The Department of Veterans Affairs (VA), through the Veterans Service Center Manager, has authority to select and appoint or recommend appointment of the person or

legal entity to receive VA benefits in a fiduciary capacity. 38 C.F.R. §§ 13.55–.63. The VA has authority to make an independent determination whether to pay benefits to a court-appointed guardian or an alternative payee of its own selection, including the veteran in certain cases. 38 U.S.C. § 5502; 38 C.F.R. §§ 13.55–.63. The VA may wish to use a third-party alternative payee (called a legal custodian) as an alternative to a court-administered guardianship. 38 C.F.R. § 13.58. In these circumstances, the custodian is still required to account to the VA on an annual basis but no bond is required and no applications for expenditure of funds are required. *See* 38 U.S.C. § 5502; 38 C.F.R. § 13.102. The main disadvantages of a legal custodianship are that (1) the custodian lacks legal standing to deal with real property and assets other than VA funds, (2) a custodian is not a legal entity who can file suit on behalf of the veteran, and (3) few safeguards exist to protect the veteran's funds against misappropriation by the custodian.

§ 4.4 Duty of Department of Veterans Affairs

The Department of Veterans Affairs is charged with the duty to oversee the use of funds paid for a veteran's benefit or to a veteran's dependent to ensure the funds are properly used. 38 U.S.C. § 5502; 38 C.F.R. § 13.100. This duty and authority extend to requiring an account and to reviewing investments made by a court-appointed guardian. 38 C.F.R. §§ 13.104, 13.106.

§ 4.5 Creditors

Benefits from the Department of Veterans Affairs (VA) are exempt from claims of creditors and state and local taxing authorities either before or after receipt. 38 U.S.C. § 5301(a); 38 C.F.R. § 13.111. However, any portion of VA benefits paid in lieu of military retirement pay is subject to garnishment for child support. 42 U.S.C. § 659.

§ 4.6 Benefits

Numerous benefits and programs are available to veterans and their dependents, including disability compensation and benefits, allowance for dependents, pensions, education and training, vocational rehabilitation, home loan guarantees, insurance programs, burial benefits, survivor benefits, and health-care benefits.

§ 4.7 Assistance

Additional information may be obtained by contacting the nearest area Department of Veterans Affairs (VA) office or representative. The toll-free telephone number of the VA is 1-800-827-1000. The VA's Web site is at www.va.gov. The VA currently has two regional offices in Texas. The Houston regional office serves much of East Texas, the Gulf Coast area, and the southern Rio Grande Valley, including Harris, Bexar, Jefferson, and Victoria counties. The Waco regional office serves North and West Texas, including Dallas, Tarrant, Potter, and El Paso counties, and much of the Hill Country, including Travis County.

§ 5 Payment of Employees Retirement System Funds

Texas Employees Retirement System (ERS) funds owed a minor may be paid directly to and managed by the beneficiary's parent. Tex. Att'y Gen. Op. No. H-1214 (1978). The attorney general's opinion relies on two provisions as support for this conclusion. First, a parent has authority to manage the estate of a minor child without court appointment of a guardian. Tex. Fam. Code § 151.001(a)(4). A parent may also receive, hold, and disburse funds for the minor's benefit. Tex. Fam. Code § 151.001(a)(8). Thus, a parent may receive and manage a minor child's ERS benefits without guardianship administration. Tex. Att'y Gen. Op. No. H-1214. Guardianship of a minor may be avoided if the sole property of the minor consists of a right to receive ERS funds, and these funds may be paid directly to the parent to be managed for the benefit of the minor.

§ 6 Managing and Possessory Conservatorship for Minor

In suits affecting the parent-child relationship, defined by Tex. Fam. Code § 101.032(a), state district courts are empowered to appoint managing and possessory conservators for minor children. Tex. Fam. Code §§ 153.005–.006. The rights and duties of nonparent possessory conservators are prescribed by Tex. Fam. Code § 153.376. A nonparent managing conservator has the right to physical possession of the minor; the duty to care for, control, protect, and provide support and education for the minor; and the power to consent to medical treatment for, make decisions of legal significance concerning, and receive, hold, and disburse funds for the support of the minor. Tex. Fam. Code § 153.371.

The statutory rights and duties of a managing conservator have been held to be equivalent to the rights, powers, and duties of guardians of the person. *See In re Guardian-*

ship of Henson, 551 S.W.2d 136, 139 (Tex. Civ. App.—Corpus Christi 1977, writ ref'd n.r.e.). Although a detailed account of use of the preemptive appointment of a managing conservatorship in lieu of guardianship is beyond the scope of this manual, it should be considered if a parent is terminally ill and wishes to settle the conservatorship premortem. Tex. Fam. Code § 153.007 provides for agreed conservatorships. *See also* Tex. Fam. Code § 161.005 (termination of parental rights).

§ 7 Authorization Agreement for Nonparent Relative

A parent may authorize a grandparent, adult sibling, or adult aunt or uncle to have decision-making authority for a minor child in regards to health care, insurance coverage, school enrollment, school activities, driver's education, employment, and application for public benefits. *See* Tex. Fam. Code ch. 34. This essentially authorizes the designee to do anything a guardian of the person could do.

See form 1 in this book.

§ 8 Removal of Disabilities of Minor

A minor who is (1) either seventeen years old or at least sixteen years old and living apart from parents, a conservator, or guardian and (2) self-supporting (or married) may ask the court to legally remove the disabilities of minority for either limited or general purposes. *See* Tex. Fam. Code ch. 31.

Although an amicus attorney or attorney ad litem must be appointed, the minor may proceed in his own name, and no next friend is required. Tex. Fam. Code §§ 31.001(b), 31.004. If there is a conservator or guardian, they are to verify the pleadings, but if they are unavailable, the amicus attorney or guardian ad litem shall verify the pleadings. Tex. Fam. Code § 31.002(b).

The petition is decided on a "best interest" standard, and the order must specify whether the removal of disabilities is limited or general in scope and the purposes for which disabilities are removed. Tex. Fam. Code § 31.005.

Except for specific constitutional and statutory age requirements, if the disabilities of the minor are removed for general purposes, the minor then has the capacity of an adult, including the capacity to contract. Such orders from other states may be effective when filed in the deed records of any county in this state. Tex. Fam. Code § 31.006.

If the minor is a ward under a pending guardianship in a statutory probate court, the judge would have the jurisdiction to remove the disabilities, following *In re Graham*, 971 S.W.2d 56 (Tex. 1998). Otherwise, the district court would have exclusive jurisdiction.

See forms 2 and 3 in this book.

§ 9 School Admission Procedures

A school district may adopt guidelines to allow admission of nonresident children to attend school in that school district without the need for a guardianship. Tex. Educ. Code § 25.001(d).

Also, a school district may adopt guidelines to allow admission of nonresident children to school if a grandparent of the child resides in the school district and the grandparent provides “a substantial amount” of after-school care for the child. Tex. Educ. Code § 25.001(b)(9).

§ 10 Durable Power of Attorney

A durable power of attorney is a written instrument by which a principal appoints and confers on an attorney-in-fact the authority to perform acts on behalf of the principal. *See* Tex. Prob. Code § 482. It may authorize the agent to receive dividends, interest, and other payments for deposit in the principal’s account, to withdraw funds from specified accounts, and to use the withdrawn funds for the principal’s support, maintenance, and medical and health needs. *See* form 4 in this book. The statute provides other powers to assist with the management of the principal’s estate. *See* Tex. Prob. Code §§ 481–506.

An authorized signature account established in conjunction with a durable power of attorney while the depositor or principal still has full capacity may help to avert the need for a guardianship of the estate if the principal later becomes unable to manage his financial affairs. Texas savings and loan associations may continue to recognize the written authorization of an attorney-in-fact to withdraw funds from a depositor’s account even though the depositor has become incapacitated, as long as the association has not received notice of the revocation of the authorization. Tex. Fin. Code § 65.107(a). Written notice of the depositor’s legal adjudication of incapacity constitutes notice of revocation. Tex. Fin. Code § 65.107(b). This provision, however, serves to protect the savings and loan association. It does not alter settled law that the

agency relationship established through a nondurable power of attorney terminates on the principal's incapacity. Because savings and loan associations generally do not recognize the authority of the attorney-in-fact after the principal becomes incapacitated, the power of attorney executed in conjunction with the authorized-signature account should be made durable. *See* Tex. Prob. Code § 496.

§ 11 Financial Durable Power of Attorney

If a power of attorney was executed before September 1, 1997, consideration should be given to replacing it with the new version discussed in the Durable Power of Attorney Act, Tex. Prob. Code §§ 481–506. See form 4 in this book.

Several significant improvements were made by the 1993 and 1997 statutory changes, including the following:

1. The power of attorney does not terminate unless the document provides a specific termination date. Tex. Prob. Code § 483.
2. A principal is bound by the agent's acts notwithstanding the incapacity or disability. Tex. Prob. Code § 484.
3. When a guardian is appointed, the agent can be made to account for all actions under the power of attorney no matter when the actions were taken. Tex. Prob. Code § 485.
4. Any person who, in good faith, relies on the power of attorney without notice of its revocation; the death, divorce, or annulment of the principal; or the appointment of a guardian, is protected. Tex. Prob. Code § 486. The agent may execute a self-serving affidavit to establish the existence of this good-faith reliance. This affidavit is permitted to state the principal's specific disability or incapacity. Tex. Prob. Code § 487.
5. The power of attorney must be recorded only if it covers real property. *See* Tex. Prob. Code § 489.
6. Appointment of a spouse as agent is automatically revoked on divorce or annulment. Tex. Prob. Code § 485A.
7. Unless otherwise instructed, the principal must strike out powers not given rather than initial those given. Tex. Prob. Code § 490.

8. The agent is permitted to make gifts as long as they do not exceed the amount of annual exclusions allowed from federal gift tax for the calendar year of the gift. Tex. Prob. Code § 490.
9. The form now defines when the principal is disabled or incapacitated and how this will be determined. Tex. Prob. Code § 490.
10. The agent is permitted to exercise the power to manage and supervise interests in real property, including oil, gas, and mineral interests. Tex. Prob. Code § 492(4)(E).
11. A durable power of attorney may be effective either immediately or on the incapacity of the principal. Tex. Prob. Code § 490.

§ 12 Real Estate Power of Attorney

Durable powers of attorney used in real estate transactions should be filed in the county in which the principal resides *and* in the county or counties in which the real property is located. *See* Tex. Prob. Code § 489. Several other important requirements for such powers of attorney are addressed in the statute. Tex. Prob. Code § 490 sets forth a statutory form of durable power of attorney. A form of durable power of attorney for use in real estate transactions incorporating the statutory requirements is included as form 5.

§ 13 Medical Power of Attorney

A medical power of attorney allows an individual to designate an agent to consent to medical treatment. *See* Tex. Health & Safety Code § 166.151. This power of attorney is not required to be notarized, but a separate, detailed disclosure statement is required. Tex. Health & Safety Code §§ 166.162–.164. *See* forms 6 and 7 in this book. The medical power is revoked by (1) oral or written notification by the principal to the agent or health-care provider “or by any other act evidencing a specific intent to revoke the power,” without regard to the principal’s capacity; (2) the execution of a subsequent power of attorney; or (3) divorce if the agent is a spouse unless the power provides otherwise. Tex. Health & Safety Code § 166.155.

§ 14 Authorization to Consent to Medical Treatment

In 1999, the Texas legislature consolidated the statutory provisions for directives to physicians and medical powers of attorney into chapter 166 of the Texas Health &

Safety Code. A directive to physicians allows one to designate, before the need arises, instructions on the use or withholding of life-sustaining procedures. The Code provides a specific form but does not mandate its use. Tex. Health & Safety Code § 166.033. See form 8 in this book. The form is called “Directive to Physicians and Family or Surrogates.” Some attorneys and clients find the form’s division of medical conditions into categories—irreversible and terminal—confusing. An irreversible condition is one with at least a six-month life expectancy; a terminal condition refers to one with a life expectancy of less than six months.

A person must not be incapacitated at the time the directive is executed. Tex. Health & Safety Code § 166.032. The directive must be signed in the presence of two witnesses or notarized. *See* Tex. Health & Safety Code §§ 166.032(b), (b-1), 166.036(a).

Under the statute, only one witness must not be related to the declarant by blood or by marriage, not be entitled to a part of the declarant’s estate, not have a claim against the patient, not be the attending physician or the employee of the attending physician, not be involved in providing direct patient care, and not be an officer, director, partner, or business office employee of the health-care facility in which the patient is located. Tex. Health & Safety Code § 166.033.

If a patient has not executed a directive and is incompetent or incapable of communication, the attending physician and the patient’s legal guardian or an agent appointed under a medical power of attorney may make a treatment decision for the patient. Tex. Health & Safety Code § 166.039(a). If there is no legal guardian or agent, the attending physician and one of the following persons in the following priority may decide to withhold or withdraw life-sustaining procedures: the patient’s spouse, reasonably available adult children, parents, or the patient’s nearest living relatives. Tex. Health & Safety Code § 166.039(b).

The directive need not be recorded to be effective, is effective on execution, and may be revoked at any time without regard to the declarant’s mental state or competency. Tex. Health & Safety Code § 166.042.

Any health-care provider who acts in compliance with a directive is not liable if the acts are done in good-faith reliance on the directive. Also, a provider who is unaware of the directive cannot be liable for acting contrary to it. Tex. Health & Safety Code § 166.045. Instructions in a directive supersede any conflicting instructions given by a guardian or agent under a durable power of attorney for health care if the directive is executed at a later time. Tex. Health & Safety Code § 166.008.

Sections 166.151–.166 also provide for a medical power of attorney, formerly known as a durable power of attorney for health care. Section 166.163 provides for a mandatory disclosure statement; section 166.164 mandates the form of the medical power of attorney. If no directive has been issued, an agent named in the medical power of attorney may act on behalf of his principal. The witness requirements are similar to those of the directive to physicians and family or surrogates.

The cost of providing the necessary medical treatment must be paid by the patient as if he had given the consent. Tex. Health & Safety Code § 166.161.

A surrogate decision maker, physician, or medical treatment provider who acts in good faith will not be subject to either criminal or civil liability for the acts. Tex. Health & Safety Code § 166.160.

§ 15 Consent of Nonparent under Family Code

The Texas Family Code provides that when a parent is unavailable to consent to dental, medical, psychological, and surgical treatment of a child, a person authorized by statute may consent to such treatment. Tex. Fam. Code § 32.001(a). A parent may also delegate authority to consent to others not authorized by statute. See form 9 in this book.

§ 16 Emergency Care

No consent for treatment is required for a minor who is suffering from what reasonably appears to be a life-threatening injury or illness and whose parent, managing or possessory conservator, or guardian is not present. Tex. Health & Safety Code § 773.008(3). A similar provision applies to unconscious adults. Tex. Health & Safety Code § 773.008(1).

§ 17 Out-of-Hospital Do-Not-Resuscitate Order

A person who is terminally ill or the legally authorized representative for such a person may direct that health-care professionals operating in an out-of-hospital situation not initiate or continue certain life-sustaining procedures. Tex. Health & Safety Code §§ 166.081–.102. Only certain designated life-sustaining procedures may be the subject of the order. Tex. Health & Safety Code § 166.081(6)(A). This directive must be executed on a form specified by the Texas Board of Health, and, among other requirements, it must include—

1. a title that readily identifies the document as an out-of-hospital do-not-resuscitate (DNR) order;
2. a statement that the directive was prepared and signed by the person's attending physician; and
3. places for the names and signatures of two qualified witnesses or the notary public's acknowledgment and for the name and signature of the attending physician.

Tex. Health & Safety Code § 166.083.

The directive is effective on execution and need not be recorded, and there is no advantage to the client in creating a public record. Tex. Health & Safety Code § 166.082(g). Any health-care provider who acts in compliance with and in good-faith reliance on such an order cannot be subjected to criminal or civil liability. In addition, if the health-care provider is not aware of the order, or if the DNR identification device is not present, there is no liability for acting contrary to the order. Tex. Health & Safety Code §§ 166.094–.096.

§ 18 End-Stage Planning and Palliative Care—Statement of Intent

With or without legal assistance, a person may express his wishes and desires as to treatment decisions as disability or death approaches. Statutes underlying the various advance directive documents include reference to the patient's wishes or intent, if known, and Texas law requires that the patient's wishes, if known, are to be followed. *See, e.g.*, Tex. Health & Safety Code §§ 166.039, 166.152(e)(1), 313.004(c).

A careful statement of the person's intent with regard to end-of-life treatment choices, surrogate decision making, and palliative care choices, even if not fully compliant as a medical power of attorney or directive to physicians, may still function as a clear statement of the patient's intent. An excellent approach would be to execute the statutory medical power of attorney and directive to physicians and attach them to the statement of intent. By providing a clear outline of the patient's wishes, the statement of intent may help to address potential uncertainties with regard to end-stage planning and palliative care that may not be addressed in other directives prescribed by statute. The statement of intent may provide useful guidance when another authorized directive does not cover a specific circumstance or is unclear regarding the patient's wishes. Practitioners should use caution to ensure that other directives and advance planning documents authorized by the client are consistent with the client's statement of intent.

A statement of intent is included as form 10 in this book for illustrative and discussion purposes. It is similar to “Five Wishes,” a copyrighted end-stage planning document that combines a health-care power of attorney, a directive to physicians, and end-stage planning statements. (See www.agingwithdignity.org/five-wishes.php.) “Five Wishes” meets the legal requirements for end-stage planning documents in forty-two states. However, because of statutory restrictions in Texas, “Five Wishes” cannot be used in Texas. The included form should be used as an example only and is not derived from any statute. Further, there is no case law upholding the use of such a statement, and it is unclear what the legal effect of such a document is under Texas law. The sample form provides a broad range of circumstances and issues that can be addressed in the statement of intent, but it is not exhaustive. The form should be adapted as necessary to accurately reflect the person’s wishes in specific circumstances, including the specification of certain time frames and percentages relating to medical treatment (for example, no CPR is to be performed unless it is done within seven minutes of cardiac arrest). Although completing a statement of intent does not require legal assistance, persons completing the form are encouraged to do so in consultation with an attorney and the client’s doctors. Any completed form must be based specifically on the person’s expressed intent.

§ 19 Surrogate Decision Making

§ 19.1 Incapacitated Individuals and Inmates

Incapacitated individuals in a hospital or nursing home, receiving services through a “home and community support services agency,” or who are adult inmates of a county or municipal jail may have nonemergency medical decisions made without the necessity of a guardianship. *See* Tex. Health & Safety Code §§ 313.001–.007.

“Incapacity” is defined as “lack[ing] the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to any proposed treatment decision.” Tex. Health & Safety Code § 313.002(5).

Any medical treatment consented to under the surrogate decision-making statute must be based on knowledge of what the patient would desire, if known. Tex. Health & Safety Code § 313.004(c).

Decision Maker Priority: Decision-making priority is given in the following order: (1) to the patient’s spouse; (2) to an adult child of the patient, with the waiver

and consent of all other qualified adult children of the patient to act as the sole decision maker; (3) to a majority of the patient's reasonably available adult children; (4) to the patient's parents; (5) to the individual clearly identified to act for the patient by the patient before the patient became incapacitated; (6) to the patient's nearest living relative; or (7) to a member of the clergy. Tex. Health & Safety Code § 313.004(a).

Surrogate decision making does not (1) replace the authority of a guardian nor of an agent under a medical power of attorney, (2) authorize treatment decisions for a minor unless the disabilities of minority have been judicially removed, or (3) authorize patient transfers under Health & Safety Code chapter 241. *See* Tex. Health & Safety Code § 313.003.

Limitations on Types of Consent: The surrogate decision maker cannot consent to (1) voluntary inpatient mental health services, (2) electroconvulsive treatment, (3) the appointment of another surrogate decision maker, (4) emergency decisions, or (5) end-of-life decisions (extending or withdrawing life support). Tex. Health & Safety Code §§ 313.003(a)(1), 313.004(d). Additionally, if the patient is an adult inmate of a county or municipal jail, a surrogate decision maker may not consent to (1) psychotropic medication, (2) involuntary inpatient mental health services, or (3) psychiatric services calculated to restore competency to stand trial. Tex. Health & Safety Code § 313.004(e).

Limitations on Period of Consent for Inmate: A surrogate decision maker for an adult inmate may consent to medical treatment on behalf of the inmate patient only for the earlier of 120 days from the day after the date the surrogate decision maker agrees to act or the date the inmate is released from jail. Following the period of consent, only the patient or the patient's appointed guardian (of the person) may consent to medical treatment. *See* Tex. Health & Safety Code § 313.004(f). Presumably, surrogate decision making would be available if the patient then otherwise qualified under the surrogate decision-maker statute.

Withdrawal of Life Support: If there is no Directive to Physicians and there is no guardian, making a treatment decision that may include withholding or withdrawing life-sustaining treatment is to be made pursuant to Health & Safety Code section 166.039. The protocol for such a decision is, in descending order of availability—

1. the attending physician and the patient's legal guardian or agent under a medical power of attorney;
2. the attending physician and either:

- a. the patient's spouse;
 - b. the patient's reasonably available adult children;
 - c. the patient's parents; or
 - d. the patient's nearest living relative; or
3. the attending physician and another physician who is not involved in the treatment of the patient or who is a representative of an ethics or medical committee of the health-care facility in which the person is a patient.

Tex. Health & Safety Code § 166.039(a), (b), (e).

Documenting Consent: The attending physician is required to—

1. describe the patient's incapacity in the patient's medical record;
2. describe the proposed medical treatment;
3. make a reasonably diligent effort to contact or cause to be contacted the persons eligible to serve as surrogate decision makers; and
4. document the efforts to contact those persons in detail in the patient's medical record.

Tex. Health & Safety Code § 313.005(a), (b).

If a surrogate decision maker consents to medical treatment on behalf of the patient, the attending physician records the date and time of the consent and signs the patient's medical record. The surrogate decision maker countersigns the medical record or signs an informed consent form. Tex. Health & Safety Code § 313.005(c).

The statute provides for the surrogate consent to be given other than in person, provided that the consent is documented in the patient's medical record, signed by the staff member receiving the consent, and countersigned by the surrogate decision maker as soon as possible. Tex. Health & Safety Code § 313.005(d).

Costs of Treatment: The statute does not make the surrogate decision maker liable for the cost of treatment. The result is the same as if the patient had consented to the treatment. Tex. Health & Safety Code § 313.006.

Limitation on Liability: The surrogate decision maker, attending physician, hospital, nursing home, home and community support services agency, and their agents are not subject to criminal or civil liability or professional liability, provided all of the

parties are acting in good faith and the medical treatment consented to does not constitute a failure to exercise due care. Tex. Health & Safety Code § 313.007.

Disputes regarding the right to act as a surrogate decision maker are to be resolved by courts with probate jurisdiction. Tex. Health & Safety Code § 313.004(b).

§ 19.2 Persons with Mental Retardation

Surrogate decision making for persons with mental retardation is a more specialized form of surrogate decision making that allows an individual surrogate decision maker, a surrogate consent committee, and an interdisciplinary team to interact to make major medical and dental decisions (including the administration of psychotropic medications and behavior interventions) and release medical records for persons who reside in an intermediate care facility for mentally retarded persons. The statute also allows other nonmedical decisions to be made by the committee or surrogate decision maker. *See* Tex. Health & Safety Code ch. 597; 40 Tex. Admin. Code §§ 9.281–.295.

Note: House Bill 1481, passed in the 2011 legislature, is the Texas implementation of its federal counterpart Rosa’s Law (Pub. L. No. 111-256, 124 Stat. 2643–2645 (2010)), which directs the legislature and state agencies to replace, as appropriate, the term “mental retardation” with the term “intellectual disability.” *See* Acts 2011, 82nd Leg., R.S., ch. 272 (H.B. 1481), eff. Sept. 1, 2011 (adding Tex. Gov’t Code ch. 392). Although House Bill 1481 took effect in September 2011, until the Texas Probate Code and other relevant statutes are amended, the “Person First” legislation is directory only. As the statutory language has not changed to reflect this law, it is necessary to track existing statutory language in order to be compliant with the current statutes.

§ 20 Interventional Alternatives

§ 20.1 Emergency Order for Protective Services

A person who lacks the capacity to consent to medical services and who is in a situation posing an immediate threat to his life or physical safety may, upon (1) the filing of a verified petition, (2) the appointment of an attorney ad litem, and (3) a finding of reasonable cause at a hearing for that purpose, be removed by Adult Protective Services to treatment and examined within seventy-two hours. Tex. Hum. Res. Code § 48.208. The removal may last no longer than seventy-two hours unless extended by the court for up to thirty days. An application for temporary and permanent guardian-

ship usually follows. This order should not be confused with a domestic violence protective order issuable under chapter 5 of the Texas Code of Criminal Procedure.

§ 20.2 Court-Ordered Mental Health Services

In the case of a chronically mentally ill person, a temporary involuntary commitment may be preferable to a guardianship. A guardianship, with its attendant removal of functional rights and the requirement that it usually be in place for at least a year, may be too restrictive once the patient/ward has been stabilized with medication. Commitment provisions for persons who are chemically dependent, persons with mental retardation, and persons with certain communicable diseases are also available in limited circumstances. *See* Tex. Health & Safety Code chs. 81, 462, 571, 574.

§ 20.3 Driving Issues—License Renewal in Person over Age Seventy-Nine and the “Re-Test Request”

Texas drivers aged seventy-nine or older can no longer renew a driver’s license by mail or electronic means; they must renew the license in person at an authorized license renewal station. Tex. Transp. Code § 521.274(b)(3). In addition, drivers aged eighty-five and older will now have to renew every two years, rather than every six years. Tex. Transp. Code § 521.2711.

A potential ward who refuses to stop driving may be reported to the Department of Transportation by a physician, a family member, or a peace officer if the person’s driving capability is impaired. Information in the license renewal application or on the driving record may prompt a reexamination. The reexamination involves an interview and may also involve a vision test, a written test, and/or a driving test.

It is possible for the applicant in a guardianship or the ad litem to request the court to make a request to the Department of Public Safety for the proposed ward to be retested under DPS regulations to determine the proposed ward’s suitability to continue to drive. See form 11 in this book.

§ 21 Designation of Guardian in Event of Later Incapacity or Need for Guardian

A designation of guardian before a need arises may be executed before incapacity. Tex. Prob. Code § 679. A statutory form is provided, but the statutory form is not mandatory. This form should be filed with the application to appoint a guardian. In

addition, this instrument may be used to designate those not desired to be appointed guardian. See form 12 in this book. The designation may be revoked in the same manner as a will under section 63 of the Probate Code. The designation need not be recorded to be effective, and there is no advantage to the client in doing so.

Under the Probate Code, however, a previously appointed guardian may be removed and replaced by the subsequent appointment of a person with a prior right to be a guardian. See Tex. Prob. Code § 759(b)–(e), (h); see *Novak v. Schellenberg*, 669 S.W.2d 162 (Tex. App.—Corpus Christi 1984, no writ); *Bell v. Grossenbacher*, 432 S.W.2d 575 (Tex. Civ. App.—San Antonio 1968, writ ref'd n.r.e.). This prior right may be waived in writing or by implication based on the person's conduct. See *Estate of Morris v. First International Bank*, 664 S.W.2d 132, 134 (Tex. App.—San Antonio 1983, no writ).

A person who holds a right to act as guardian that is superior to that of the appointed guardian must bring the application for his subsequent appointment. Tex. Prob. Code § 759(f).

§ 22 Declaration of Appointment of Guardian for Children in Event of Death

The last surviving parent may direct the appointment of a guardian of the children. Tex. Prob. Code §§ 676(d), 677(b), 677A. A statutory form is provided, but any form that clearly indicates the declarant's intention may be used; see form 13 in this book. The declaration must be attested to by two credible witnesses fourteen years of age or older and must have attached a self-proving affidavit signed by the declarant and witnesses. The declaration is effective on execution and may be revoked in the same manner as a will under section 63 of the Probate Code. The declaration may be filed at any time after an application to appoint a guardian has been filed and does not need to be recorded to be effective. See Tex. Prob. Code § 677A(d).

§ 23 Declaration for Mental Health Treatment

A declaration may be made for mental health treatment in the event of future incapacity. A statutory form is provided that makes these treatment designations effective. Tex. Civ. Prac. & Rem. Code § 137.011. See form 14 in this book.

Significant factors that affect this declaration include the following:

1. The declarant must not be incapacitated at the time the declaration is made.
2. A preference or instruction may consist of either a consent to or refusal of any treatment.
3. The declaration is effective on execution and expires three years after the date of execution or on revocation. But if the person is incapacitated on the expiration date, the declaration remains effective until the person is no longer incapacitated.
4. The declaration must be signed in the presence of two witnesses. Civil Practice and Remedies Code section 137.003(b) lists persons who, because of their relationship to the declarant, may not serve as witnesses.
5. Any health-care provider who acts in compliance with the declaration is not subject to criminal or civil liability if the acts are done in good-faith reliance on the declaration. In addition, if the provider was not provided with a copy of the declaration and was unable to determine whether a declaration existed, there is no liability for acting contrary to it.
6. The declaration may be disregarded only if the person is under an involuntary commitment or if an emergency exists and the patient's instructions have not been effective in avoiding the emergency.
7. The instructions in the declaration supersede any conflicting instructions given by a guardian or agent under a durable power of attorney for health care.

Tex. Civ. Prac. & Rem. Code §§ 137.001–.011.

§ 24 Payment of Claims without Guardianship

Any debtor may discharge debts to a minor, an incapacitated person, or a former ward by paying the owed funds to a county clerk. Tex. Prob. Code § 887. This provision eliminates the need for a guardianship proceeding. The right to receive such payment must be liquidated and uncontested in any pending lawsuit, and each payment must not exceed \$100,000. Tex. Prob. Code § 887(a).

Payment to a resident minor or incapacitated person, referred to as the “creditor” in the statute, should be made in the county in which the creditor resides. Tex. Prob. Code § 887(a). Payment to a nonresident should be made in any county in which the nonresident creditor owns real property. If the nonresident creditor is not known to own real property in Texas, payment may be made in the county in which the debtor resides. Tex. Prob. Code § 887(e). See form 15 in this book.

The receipt issued by the county clerk binds the creditor as of the date and to the extent of the payment. The clerk must immediately notify the court and the creditor of the payment. As soon as the money has been deposited, the clerk will invest it in accordance with court order for the account of the minor or the incapacitated person. Tex. Prob. Code § 887(a). Not later than March 1 of each calendar year, the clerk will report to the court on the status of the investment. Tex. Prob. Code § 887(b).

The creditor's unestranged spouse, father, or mother may apply to the court to withdraw money for the use and benefit of the creditor. Tex. Prob. Code § 887(c). See forms 16 and 17. If there is no spouse and no parent alive and residing in Texas, the resident person with actual custody of the creditor may apply to withdraw the funds. The person making withdrawal must give a bond in double the amount of money on deposit, conditioned on use of the money as directed by the court for the benefit of the creditor. Tex. Prob. Code § 887(c). Note that there is no provision for withdrawal by the guardian of a nonresident.

The custodian must file a sworn accounting with the county clerk when the money has been expended in accordance with the orders of the court. The court's approval of this accounting releases the custodian and the sureties on the custodian's bond from liability. Tex. Prob. Code § 887(d).

If the money is not withdrawn by a custodian, the creditor on whose behalf it was deposited may withdraw it when the creditor's disability is removed. If the person entitled to the money dies before it is withdrawn, that person's personal representatives or heirs may withdraw it. In either case, the withdrawal may be without bond, simply by obtaining a court order directing the clerk to deliver the money to the person or persons entitled to it. Tex. Prob. Code § 887(f).

Payment of claims of less than \$10,000 to charitable institutions for the benefit of incapacitated inmates is also allowed. Tex. Prob. Code § 887(g).

**§ 25 Management of Funds Recovered for Minor or Incapacitated
Person in Lawsuit Brought by Next Friend or Guardian Ad
Litem**

A next friend may represent and sue on behalf of minors and incapacitated persons who have no legal guardian. Tex. R. Civ. P. 44. A guardian ad litem may also represent the best interests of a minor. *See* Tex. Prop. Code § 142.001.

When a judgment is recovered in a lawsuit brought by a next friend, the court may enter an order authorizing the next friend or another person to take charge of the property recovered and administer it for the minor or incapacitated person. Tex. Prop. Code § 142.002. The person authorized to take charge of the property must execute a bond conditioned on his using it to benefit the owner under direction of the court and delivering it and its increase to the person entitled to receive it when so ordered by the court. Tex. Prop. Code § 142.002(b)(3). If the bond is executed by a solvent Texas surety company, it must be in an amount equal to the value of the money and property recovered; a bond not issued by a surety company must be in an amount double the amount of the recovery. Tex. Prop. Code § 142.002(b)(1).

A next friend is authorized to invest the recovered funds in interest-bearing time deposits in financial institutions insured by the Federal Deposit Insurance Corporation. Tex. Prop. Code § 142.004(a)(1)(B). On court order, the clerk of the court may invest the funds appropriately. Tex. Prop. Code § 142.004(a)(2). If the funds are deposited in a manner that prevents withdrawal from the financial institution without a court order, no bond will be required of the next friend with respect to the funds until they are actually withdrawn. Tex. Prop. Code § 142.004(b). Interest on such an account will be paid in the same manner as on accounts governed by chapter 117 of the Local Government Code. Tex. Prop. Code § 142.004(d). On withdrawal of the funds the court may order them either transferred to a beneficiary who has recovered capacity or managed under different authority. Tex. Prop. Code § 142.004(c). See sections 26.3 and 26.4 below for a discussion of trusts created under chapter 142 of the Texas Property Code.

Practice Pointer: Because neither the Property Code nor the Rules of Civil Procedure provide for any oversight mechanism for next friend management of a minor's property, under no circumstances should a nonparent next friend be allowed to seek to manage the funds personally.

Practice Pointer: Attorneys proceeding in litigation representing a next friend should be aware that their contingent fee agreements are subject to attack if the next friend is not the guardian, whether court-appointed or natural. *Massey v. Galvan*, 822 S.W.2d 309 (Tex. App.—Houston [14th Dist.] 1992, writ denied).

In *Stern v. Wonzer*, 846 S.W.2d 939, 947 (Tex. App.—Houston [1st Dist.] 1993, no writ), the contingent fee agreement was limited to one-third, including expenses, upon the finding that next friends were subject to the same restrictions as guardians.

Practice Pointer: A dilemma may arise when a personal injury case settles and no consideration is given to the allocation of the award between the survival and wrongful death causes of action. This can lead to complicated tax issues, as well as potential problems with creditors who have had their claims approved in the probate case and are waiting for the estate to receive its share of the survival cause of action. *See Texas Health Insurance Risk Pool v. Sigmundik*, 315 S.W.3d 12 (Tex. 2010); *Elliott v. Hollingshead*, 327 S.W.3d 824 (Tex. App.— Eastland 2010, no pet.).

§ 26 Trusts

§ 26.1 Purpose and Function

Guardianship of an incapacitated person may sometimes be avoided through effective use of an inter vivos or testamentary trust.

§ 26.2 Inter Vivos Revocable Trust for Grantor

An inter vivos (or living) revocable trust may be created to plan for an individual's own needs in the event of later incapacity. Placing assets in trust provides a flexible method of handling financial affairs in case of later disability and may avoid the need for a future guardianship. For general information on trusts, see Tex. Prop. Code ch. 112.

Often the individual will serve as initial trustee of an inter vivos trust that he establishes as grantor and will name a successor trustee to take charge if the grantor becomes incapacitated. Alternatively, the trust agreement may provide that the grantor initially act as advisor to the trustee, who is bound to follow the grantor's instructions in managing the trust property as long as the grantor remains capacitated. The trust instrument may set the terms for determining incapacity, usually by a letter or certificate from the grantor's attending physician. The attorney should also explore the possibility of structuring the trust so that it becomes irrevocable if the grantor becomes incapacitated.

A revocable trust offers no tax advantages to the grantor. Income from the trust is taxed to the grantor because it passes to him during his lifetime; at his death, the trust property will be taxed for federal estate tax purposes as part of his gross estate.

If an inter vivos trust is coupled with a durable power of attorney, the trust may be minimally funded when created. The durable power of attorney should give the agent

power to transfer specified additional assets to the trust if the grantor becomes incapacitated. This arrangement avoids unnecessary trust management and fees and leaves the grantor's assets free until the need for trust administration actually arises. The grantor thus retains both legal and equitable title to his assets as long as he has capacity to manage them and yet is assured that his affairs will be properly managed without the need for a guardian if he later becomes incapacitated.

The trust agreement governing disbursement of income and principal should be drafted to meet both present and future needs of the grantor. A common trust provision is that, before disability, the trustee will pay over to the grantor all the income of the trust. Should disability occur, the trustee will pay over for the benefit of the grantor any income and principal necessary to support and maintain the grantor. The trust agreement may further provide for termination of the trust at the grantor's death and for delivery of the trust assets to the executor or administrator of the grantor's estate.

§ 26.3 Texas Property Code Section 142 Trusts

On application, a court with jurisdiction over a suit involving a beneficiary may establish a trust for the beneficiary for the management of funds accruing under the judgment. See form 18 in this book. The court must find that the establishment of a trust would best serve the interests of the beneficiary. The decree shall direct the clerk to deliver the funds owed to the beneficiary under the judgment to a financial institution as trustee. However, if the value of the principal is \$50,000 or less, a person other than a financial institution may be appointed to serve as trustee if the court finds that it is in the beneficiary's best interests. If the value of the principal is greater than \$50,000, a person other than a financial institution may only be appointed to serve as trustee if no financial institution is willing to serve and the court finds that it is in the best interests of the beneficiary. Tex. Prop. Code § 142.005. See forms 19, 20, and 21.

On the petition of a parent, next friend, guardian, conservator, guardian or attorney ad litem of the beneficiary, the court may appoint a guardian ad litem to investigate whether the trustee should be removed for failing or refusing to make necessary distributions as required under the terms of the trust. The petitioner will be reimbursed for reasonable attorney's fees from the trust, up to \$1,000. Tex. Prop. Code § 142.005(k), (l).

A trust under Texas Probate Code section 867 may also be created as an alternative to a section 142 trust or as a less restrictive alternative to guardianship. A statutory court

may, with the agreement of both parties, transfer a section 142 trust to a guardianship and modify the section 142 trust to a section 867 trust in order to provide increased oversight of the trust for the protection of the beneficiary. Section 867 trusts are discussed in section 26.6 below.

§ 26.4 **Mandatory Provisions for Texas Property Code Section 142 Trusts**

Statutory requirements for a section 142 trust are as follows:

1. The beneficiary must be either (a) a minor or incapacitated person who has no legal guardian and is represented by a next friend or an appointed guardian ad litem or (b) a person with a physical disability. Tex. Prop. Code §§ 142.001(a), 142.005(o). If there is a legal guardian, the appropriate trust is one established under Tex. Prob. Code § 867. See section 26.6 below for further discussion of section 867 trusts.
2. The trustee must be a financial institution, except as provided by Tex. Prop. Code § 142.005(m), (n). Tex. Prop. Code § 142.005(a).
3. A trustee that is a financial institution shall serve without bond. Tex. Prop. Code § 142.005(b)(5).
4. The beneficiary must be the sole beneficiary of the trust. Tex. Prop. Code § 142.005(b)(1).
5. The trust must provide for distributions of principal, income, or both as the trustee determines reasonably necessary for the health, education, support, or maintenance of the beneficiary. Medicine or treatments approved by a licensed physician may be conclusively presumed to be appropriate for the health of the beneficiary. Any income not distributed shall be added to the principal of the trust. Tex. Prop. Code § 142.005(b)(2), (3). See form 20 in this book.

Practice Pointer: If distributions are made using this standard, the beneficiary will not qualify for state Medicaid assistance. A departure from this standard distribution is permitted to incorporate “special needs” language necessary to maintain government benefits:

Notwithstanding any other provision in this chapter, if the court finds that it would be in the best interests of the beneficiary for whom a trust is established under this section, the court may omit or modify any terms required

by Subsection (b) if the court determines that the omission or modification is necessary or appropriate to allow the beneficiary to be eligible to receive public benefits or assistance under a state or federal program. This section does not require a distribution from a trust if the distribution is discretionary under terms of the trust.

Tex. Prop. Code § 142.005(g). See section 26.5 below.

6. The trust must provide that the trustee receive reasonable compensation on application to and approval of the court. Tex. Prop. Code § 142.005(b)(6).
7. The following statutory language must be included on the first page of the trust instrument: NOTICE: THE BENEFICIARY AND CERTAIN PERSONS INTERESTED IN THE WELFARE OF THE BENEFICIARY MAY HAVE REMEDIES UNDER SECTION 114.008 OR 142.005, PROPERTY CODE.
8. If the beneficiary is a minor, the trust terminates on the beneficiary's death, when the beneficiary reaches the age stated in the trust, or when he reaches the age of twenty-five, whichever occurs first. If the beneficiary is incapacitated, the trust terminates when the beneficiary regains capacity or on the death of the beneficiary. Tex. Prop. Code § 142.005(b)(4).
9. On termination, the remaining trust estate is distributed to the beneficiary or the representative of the estate of the deceased beneficiary. Tex. Prop. Code § 142.005(e).

Practice Pointer: If the trust is to qualify as a special needs trust under 42 U.S.C. § 1396p(d)(4)(A), it must provide for repayment to the state for Medicaid benefits paid on behalf of the beneficiary before distribution of assets to the beneficiary or his representative. Therefore the attorney should take care to provide for repayment as mandated by 42 U.S.C. § 1396p(d)(4)(A) and as permitted by Tex. Prop. Code § 142.005(g).

§ 26.5 Special Needs Trusts under 42 U.S.C. Section 1396p(d)(4)(A)

A special needs trust qualifying under 42 U.S.C. § 1396p(d)(4)(A) may be created by applying to the court in which the lawsuit is pending for an order creating a trust under Texas Property Code section 142 or by creating a section 867 trust in a guardianship proceeding.

A severely injured person often will require Medicaid assistance to pay for continuing medical care. Proceeds from the settlement of a lawsuit may disqualify an individual

from Medicaid eligibility because individuals whose resources exceed certain limits cannot qualify for Medicaid. Certain assets, however, will not count as resources in determining Medicaid eligibility. For example, assets placed in a trust for “special needs” of an individual, including periodic payments from a structured settlement, should not affect Medicaid eligibility.

Purpose: The purpose of a special needs trust is to provide for the beneficiary’s supplemental needs only; it may not be used for the beneficiary’s basic support, including basic food, clothing, shelter, health, support, maintenance, and education.

Requirements: A special needs trust may be established by a parent, a grandparent, a legal guardian, or a court for the assets of an individual who is less than age sixty-five when the trust is created and who is disabled. The trust must provide for repayment of the state on termination of the trust. 42 U.S.C. § 1396p(d)(4)(A).

For an individual to be considered “disabled,” he must be “unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months”; or, in the case of a child under the age of eighteen, if the child suffers from any medically determinable physical or mental impairment of comparable severity as long as that child does not engage in substantial gainful activity. 42 U.S.C. § 1382c(a)(3)(A), (C).

This definition differs substantially from those of “incapacitated person” found in the Texas Property Code and the Probate Code. Section 142.007 of the Property Code provides that “‘incapacitated person’ means a person who is impaired because of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or any other cause except status as a minor to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.” *See* Tex. Prop. Code § 142.007. The Probate Code defines an “incapacitated person” as—

- (A) a minor;
- (B) an adult individual who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual’s own physical health, or to manage the individual’s own financial affairs; or
- (C) a person who must have a guardian appointed to receive funds due the person from any governmental source.

Tex. Prob. Code § 601(14).

§ 26.6 Section 867 Management Trust

A management trust established under section 867 of the Probate Code is a court-ordered trust created for a ward or an incapacitated person. The court must find that such a trust is in the ward's or incapacitated person's best interests. Such a trust generally eliminates the need for a guardian of the ward's estate and permits the ward's property to be managed without application to the court for approval of discretionary distributions, payment of expenses, and other day-to-day administrative actions. Tex. Prob. Code § 867. The ward must be the sole beneficiary of a section 867 trust. Tex. Prob. Code § 868(a)(1). Texas Probate Code sections 867 through 873 specify important technical requirements for management trusts.

Termination of Guardianship: If all the assets of the guardianship estate are transferred to a section 867 trust, the guardian terminates the guardianship estate in the same way that a guardianship terminates at the death of the ward or the removal of the ward's disabilities—by filing a final account, an application and order to discharge the guardian and terminate the guardianship, a waiver of notice of the final account, a receipt from the recipient of assets, and other appropriate documents.

After the section 867 trust is created, the court may discharge the guardian of the estate only if the guardian of the ward's person remains and the court determines that the discharge is in the ward's best interests. Tex. Prob. Code § 868A.

Application: If there is an existing guardianship, the guardian of the ward's estate, the guardian of the ward's person, the guardian of both the ward's estate and his person, or the ward's attorney ad litem or guardian ad litem may apply to the court in which the guardianship is pending to create a trust under section 867 of the Texas Probate Code. Tex. Prob. Code § 867(a-1), (b). The application for creation of a section 867 trust for a ward must be filed in the court in which the guardianship is pending. If the guardian of the person and the guardian of the estate are in agreement, both may join in the application. If one person is serving as guardian of both the person and estate, that person should file the application in both capacities. See forms 22 and 23 in this book.

Best Interest: The establishment of a section 867 trust must be in the ward's best interests, and the court must make a finding to that effect. Tex. Prob. Code § 867(b). Section 867 does not define the term *best interests* or address factors the court may consider in determining best interests, so the attorney will have to describe these

items based on the facts. For example, if the applicant seeks to establish a section 867 “special-needs” trust, the ward’s best interests will be served by preserving the ward’s Social Security or Medicaid eligibility. If the trust is not a special-needs trust, it is presumptively in the ward’s best interests to save the court costs and legal fees associated with a regular guardianship and obtain the advantages of the professional management and broader investment options available to a corporate trustee.

Termination: If the ward is a minor, a section 867 trust terminates on the death of the ward or on the ward’s eighteenth birthday, whichever is earlier, or on a date selected by the court that is not later than the ward’s twenty-fifth birthday. Tex. Prob. Code § 870. Some courts will not permit a section 867 trust to extend beyond the ward’s eighteenth birthday, assuming the ward is not otherwise incapacitated. If the applicant wants the trust to extend beyond the ward’s eighteenth birthday, the applicant should check with the court in which the guardianship is pending. If the ward is not a minor, the trust terminates on the date the court determines that continuing the trust is no longer in the ward’s best interests, subject to Probate Code section 868C(b), or on the death of the ward. Tex. Prob. Code § 870(b).

Application and Order to Discharge: After the order approving the final account is signed and entered, the trustee of a section 867 trust must deliver any property remaining in the trust to the former ward, a successor trustee, or the representative of the deceased ward’s estate. Tex. Prob. Code § 873. The trustee should obtain a receipt from the person or entity to whom the property was delivered and file it with the court along with the application and order to discharge the trustee.

§ 26.7 Pooled Trust Subaccounts

As an alternative to an 867 trust, the court may order that a subaccount of a pooled trust be established for the benefit of (1) a minor or other incapacitated person, (2) an alleged incapacitated person, or (3) a disabled person who is not an incapacitated person. *See* Tex. Prob. Code §§ 910–916. This type of trust meets the requirements of 42 U.S.C. section 1396p(d)(4)(C), which exempts it from the applicability of 42 U.S.C. section 1396p(d) in determining the eligibility of a person who is disabled for medical assistance.

Funds that are otherwise appropriate for a guardianship management trust may then be transferred to the subaccount. Such a transfer will preserve qualification for state medical assistance (Medicaid). This presents a realistic alternative to keep funds in

professional management that might have been spent down below the economic threshold of most bank trust departments.

In addition, assets in a guardianship management trust pursuant to Probate Code section 867 may also be transferred to a subaccount of a master pooled trust upon a determination by the court that it is in the best interests of the beneficiary of the trust. Tex. Prob. Code § 868C(a).

The transfer of the trust assets to the pooled trust subaccount is treated as a continuation of the management trust and thus preserves the beneficiary's eligibility for medical assistance under chapter 32 of the Texas Human Resources Code. Tex. Prob. Code § 868C(a).

The management trust may not be terminated until all such assets have effectively been transferred to the subaccount of the pooled trust. Tex. Prob. Code § 868C(b).

The trustee or manager of the pooled trust may be required by the court to file an annual report with the court clerk. Tex. Prob. Code § 916(b). However, the report is not a guardianship-style accounting, and approval by the court is not mandated. Additionally, the trustee may assess its standard fees against the subaccount, rather than have its fees measured by the standard of guardianships. Tex. Prob. Code § 916(a).

The subaccount terminates on the earliest of the date of (1) the beneficiary's eighteenth birthday, if the beneficiary is not disabled on that date and was a minor at the time the subaccount was established; (2) the beneficiary's death; or (3) upon an order of the court terminating the subaccount. Tex. Prob. Code § 914(1). Upon termination, any assets remaining in the subaccount after reimbursement of any state Medicaid claims are payable to the beneficiary, if living and not incapacitated; otherwise the remaining assets are payable to the beneficiary's guardian, if the beneficiary is living and is incapacitated, or to the personal representative of the beneficiary's estate, if the beneficiary is deceased. Tex. Prob. Code § 914(2).

See forms 24 and 25 in this book.

§ 26.8 Testamentary Trust for Another

A testamentary trust may be created in a will for the benefit of a mentally or physically disabled family member. State statutes allow trustees great discretion in making disbursements from the trust for the benefit of the disabled person. For general information concerning trusts, see Tex. Prop. Code ch. 112.

Many attorneys recommend that the trust be administered jointly by a corporate trustee, such as a bank, and an individual, such as a close family member who is sensitive to the needs of the disabled person. A carefully drafted will with testamentary trust provisions may avoid the need to establish a guardianship to administer that portion of the decedent's estate of which the disabled person is the beneficiary. Because many disabled persons receive government benefits, it may be necessary to carefully structure the testamentary trust to ensure that the disabled person will remain eligible for those benefits. Such trusts generally are referred to as "special needs" or "supplemental needs" trusts. See section 26.5 above.

§ 26.9 Trusts for Mentally Retarded Persons

Certain trusts containing not more than \$250,000 for the benefit of individuals in certain residential-care facilities may be established for mentally retarded persons without disqualifying them from receiving state benefits and without the need for a guardianship. If a disabled person who is mentally retarded is in a residential-care facility operated by the Texas Department of Aging and Disability Services or a state agency, governmental unit, or unit of local government and is the beneficiary of a trust, up to \$250,000 of the corpus and income is not considered to be the property of the resident or his estate and is not liable for the resident's support, maintenance, or treatment in the residential-care facility, regardless of the resident's age. Tex. Health & Safety Code § 593.081. The trust must be created by written instrument, a copy of which must be provided to the Texas Department of Aging and Disability Services. Tex. Health & Safety Code § 593.081(b). The Department may request a current financial statement showing the value of the trust estate. Tex. Health & Safety Code § 593.081(c). If the trustee does not provide a financial statement, the Department may petition a district court to order the trustee to provide a current financial statement. Tex. Health & Safety Code § 593.081(d). Failure of a trustee to comply with the court's order is punishable by contempt. Tex. Health & Safety Code § 593.081(e). Guardianships established under the Texas Probate Code, trusts established under chapter 142 of the Texas Property Code, funds in a patient's trust fund account in a residential-care facility, child support, an administration of a decedent's estate, and funds held in the registry of the court are not considered trusts and are not entitled to the exemption. Tex. Health & Safety Code § 593.081(f).

§ 27 Management of Community Property by Spouse

When a husband or wife is judicially declared to be incapacitated, the other spouse is given full power to manage the entire community estate of the couple without any

court intervention. Tex. Prob. Code § 883(a)(1). The spouse who is not incapacitated is presumed qualified to serve as the community administrator. Tex. Prob. Code § 883(b). If the incapacitated spouse owns separate property, it will be necessary to appoint a guardian of the estate to administer the separate property. Tex. Prob. Code § 883(a)(2). Typically, the capacitated spouse applies to be named guardian of the person and recognized as community administrator.

On good cause shown or by motion of the court, the community administrator may be required to file an inventory and appraisal as well as an annual accounting. Tex. Prob. Code § 883B.

A community administrator may be removed after citation, notice, and hearing for the grounds specified in Probate Code section 883C. *See* Tex. Prob. Code § 883B.

Pursuant to Code section 883A, if the incapacitated spouse is restored, the authority of the community administrator ceases. Provisions for restoration are found under section 694A. *See* Tex. Prob. Code §§ 694A, 883B.

The rights of creditors and the duties and obligations of support are not affected by the administration of community property under this section, nor is the community property partitioned. Tex. Prob. Code § 883(e), (f).

If a lawsuit or divorce proceeding is filed against the incapacitated spouse, the community administrator is required to inform the court in writing. Tex. Prob. Code § 884A.

§ 28 **Order of No Administration**

In a situation where title to estate assets needs to be transferred to an incapacitated surviving spouse, incapacitated adult children, or minor children and the value of the assets does not exceed the amount to which the spouse and children would otherwise be entitled to as a family allowance, an application for order of no administration may be employed if there is otherwise no necessity for administration. Tex. Prob. Code § 139. The procedure incorporates elements of a small estate affidavit and an application for a family allowance. The court may dispense with notice or may prescribe the quality and quantity of notice required. Tex. Prob. Code § 140.

The court's order reads like the facilitation of payment language in a muniment of title proceeding and acts as authority to effect the transfer of the property involved. Tex. Prob. Code § 141. Such an order may be revoked within one year if other information

comes to light showing a necessity for administration. Tex. Prob. Code § 142. See forms 26 and 27 in this book.

§ 29 Transfer under Texas Uniform Transfers to Minors Act

A guardianship may be avoided through the use of the Texas Uniform Transfers to Minors Act, commonly referred to as TUTMA. Tex. Prop. Code ch. 141. A minor may receive property through inter vivos or testamentary gifts, or exercises of powers of appointment may be made to a minor. Tex. Prop. Code §§ 141.005–.008. The donor may designate a custodian to receive property on behalf of a minor. Tex. Prop. Code § 141.006. The Code specifies the required manner of making each type of gift. Tex. Prop. Code § 141.010(a). See form 28 in this book.

For example, a gift of a registered security may be made simply by registering it in the name of an adult or trust company as custodian for the minor under the Act or by delivering it. Tex. Prop. Code § 141.010(a)(1)(A). Similarly, gifts of money may be made by delivering the money to a broker or bank for credit to an account in the name of an adult or trust company custodian for the minor under the Act. Tex. Prop. Code § 141.010(a)(2). Gifts of life or endowment insurance policies or annuity contracts may be made either by registering the policy in the name of an adult or trust company as custodian for the minor under the Act or by assigning and delivering the policy or contract to the custodian. Tex. Prop. Code § 141.010(a)(3). Irrevocable powers of appointment and irrevocable present rights to future payments may be transferred by written notice that the right is transferred. Tex. Prop. Code § 141.010(a)(4). Real and tangible personal property may be transferred by executing and delivering the appropriate transfer instrument to the custodian. Tex. Prop. Code § 141.010(a)(5), (6). If the gift is testamentary, the transfer may be accomplished by a provision in the donor's will giving the property to an adult as custodian for the minor. Tex. Prop. Code § 141.004(a). If the designated custodian dies or is unable or unwilling to serve, the donor's personal representative may designate an eligible successor custodian. Tex. Prop. Code § 141.006(c). The legal representative of a decedent may transfer property without a court order if the property is covered by the Act and the transfer is authorized in the governing will. Tex. Prop. Code § 141.006(a).

Gifts made under the Act are irrevocable, and legal title to the custodial property vests indefeasibly in the minor subject to the provisions of the Act. Tex. Prop. Code § 141.012(b).

During the minority of the donee, the custodian must prudently manage and invest the custodial property. Tex. Prop. Code § 141.013. The custodian must pay or expend for the benefit of the minor as much of the property as he deems advisable to support, maintain, educate, and benefit the minor, in a manner the custodian deems suitable. Tex. Prop. Code § 141.015.

When the minor attains the age of twenty-one, marries, or has his disabilities removed, the custodian must deliver the remaining property to the minor. Tex. Prop. Code § 141.021. If the minor dies before the custodianship is terminated, the custodian must deliver the remaining property to the minor's estate. Tex. Prop. Code § 141.021(3).

The custodian must keep records of all transactions with respect to the custodial property and make them available for inspection by a parent or legal representative of the minor or by the minor if he is fourteen years old or older. Tex. Prop. Code § 141.013(e). The custodian, if not the transferor, has a noncumulative election each calendar year to charge reasonable compensation. Tex. Prop. Code § 141.016. A third party acting in good faith has no liability for acting on instructions of a person acting as custodian. Tex. Prop. Code § 141.017. Additional transfers to custodianships in existence before September 1, 1995, shall be distributed to the beneficiary on his eighteenth birthday or earlier as prescribed in Tex. Prop. Code §§ 141.021, 141.025.

§ 30 Sales of Property

§ 30.1 Sale of Property without Guardianship—Minor

An application for the sale of real or personal property under Tex. Prob. Code § 889 permits a sale to take place without the appointment of a guardian of the person or estate. The value of the property to be sold may not exceed \$100,000. The application may be made by either a parent or the managing conservator of a minor who has no court-appointed guardian. The proceeds must be placed in the court registry and can only be withdrawn under the provisions of Tex. Prob. Code § 887. See forms 29 and 30 in this book.

The sale is usually in the form of a private sale, and section 889 provides that the sale must be for cash. As a general rule, these sales are already subject to an earnest-money contract, which should be made subject to the court's approval. The most important aspect of the sale is whether the ward will receive adequate consideration; most courts will not otherwise approve these sales. If real property is involved, most

sales will be conducted through a title company, and a proposed closing statement should accompany the application. The clerk cannot adjust the order of sale to accept a deposit of less money than is shown on the order after it has been signed.

§ 30.2 Sale of Property without Guardianship of Estate

Under Tex. Prob. Code § 890, the request for sale can be made only by a guardian of the person. This provision is similar to that of section 889. This procedure may be used only if there is no need for a guardianship of the estate and the total value of the property of the incapacitated person does not exceed \$100,000. See forms 31 and 32 in this book. The proceeds must be placed in the registry of the court and may be withdrawn only under the provisions of section 887 of the Probate Code. This statute provides that the custodian of the person for whose benefit the money is to be used (referred to as the "creditor" in this section of the statute) may be the father, mother, or unestranged spouse or, if they are unavailable, the person who has actual custody. The custodian may expend the funds placed in the registry of the court for the benefit of the creditor. Additionally if an inmate in an eleemosynary institution lacks a legal guardian of his estate, the institution may make use of the funds for the inmate. If the custodian does not withdraw the money, the creditor, after termination of the creditor's disability, may withdraw the money, or the creditor's heirs or personal representative may withdraw the money as provided by section 887(f). Tex. Prob. Code § 887.

As with sales under section 889, the sale of real and personal property under section 890 is usually in the form of a private sale. The sale must be for cash because the proceeds are to be placed in the court registry. As a general rule, these sales are already subject to an earnest-money contract, which should be made subject to the court's approval. The most important aspect of the sale is the amount of the net proceeds. Most courts will not approve these sales unless the ward is to receive adequate consideration. If real property is involved, most sales will be conducted through a title company, and a proposed closing statement should accompany the application. The clerk cannot adjust the order of sale to accept a deposit of less money than is shown on the order after it has been signed.

§ 31 Receivership

When an incapacitated person owns an interest in an ongoing business or commercial property that is in danger of injury, the court may appoint a receiver to take charge of the estate. The receiver is subject to the same compensation and bonding provisions

under the Probate Code as a personal representative. The receiver administers the property until the need for the receivership is over. Tex. Prob. Code § 885.

In 1999, the provisions for guardianship for missing persons were repealed. Receivers are now to be appointed for missing persons. *See* Tex. Civ. Prac. & Rem. Code §§ 64.001(d), 64.101–.108.

See forms 33 and 34 in this book.

§ 32 Social Service Agencies

Many social service agencies provide a variety of services specifically tailored to the needs of children, the disabled, and the elderly. Many will have a particular emphasis toward a target group, such as veterans or the intellectually disabled.

Beyond the Emergency Order for Protective Services (*supra*), the ability of either Adult Protective Services or Child Protective Services to investigate a potential exploitation or neglect situation is vital to ensuring that the needs of these target groups are met.

Form 1

Authorization Agreement for Nonparent Relative or Voluntary Caregiver



**AUTHORIZATION AGREEMENT
FOR NONPARENT RELATIVE OR
VOLUNTARY CAREGIVER**

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This authorization agreement is made in conformance with Chapter 34 of the Texas Family Code concerning the following Child:

Child's Full Name:
Date of Birth:

Parent completing this form:

Full Name:
Physical Address:
Telephone Number:
Other contact information:

Child's other parent:

Full Name:
Physical Address:
Telephone Number:
Other contact information:

Parent voluntarily authorizes the following relative or Parental Child Safety Placement voluntary caregiver to make certain decisions regarding the child, as listed on the next page of this authorization agreement.

Name:
Relationship to Child (check one): Child's Grandparent <input type="checkbox"/> Child's Adult Sibling <input type="checkbox"/> Child's Aunt or Uncle <input type="checkbox"/> Parental Child Safety Placement Voluntary Caregiver in accordance with Child Protective Services <input type="checkbox"/>
Physical Address:
Telephone Number:
Other contact information:

PARENT AND RELATIVE OR VOLUNTARY CAREGIVER UNDERSTAND THAT THEY ARE REQUIRED BY LAW TO IMMEDIATELY PROVIDE EACH OTHER WITH INFORMATION REGARDING ANY CHANGE IN THE OTHER PARTY'S ADDRESS OR CONTACT INFORMATION.



**AUTHORIZATION AGREEMENT
FOR NONPARENT RELATIVE OR
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Parent authorizes the above named relative or voluntary caregiver to perform the following acts in regard to the child and the relative or voluntary caregiver assumes the responsibility of performing these functions:

- (1) To authorize medical, dental, psychological, surgical treatment, and immunization of the child, including executing any consents or authorizations for the release of information as required by law relating to the treatment or immunization;
- (2) To obtain and maintain health insurance coverage for the child and automobile insurance coverage for the child, if appropriate;
- (3) To enroll the child in a day-care program or public or private preschool, primary or secondary school;
- (4) To authorize the child to participate in age-appropriate extracurricular, civic, social, or recreational activities, including athletic activities;
- (5) To authorize the child to obtain a learner's permit, driver's license, or state-issued identification card;
- (6) To authorize employment of the child; and
- (7) To apply for and receive public benefits on behalf of the child.
- (8) This authorization agreement does not confer on the relative or voluntary caregiver of the child the right to authorize the performance of an abortion on the child or the administration of emergency contraception to the child

To the best of the parent's and the relative's or voluntary caregiver's knowledge (check if applicable):

This child is not the subject of a current (pre-existing) valid authorization agreement, and no parent, guardian, custodian, licensed child-placing agency or other agency makes any claim to actual physical possession or care, custody or control of the child that is inconsistent with this authorization agreement.

To the best of the parent's and the relative's or voluntary caregiver's knowledge (choose one from below):

THERE IS NO COURT INVOLVEMENT WITH THIS CHILD

All of the following statements must apply:

- There is no court order or pending suit affecting the parent-child relationship concerning the child.
- There is no pending litigation in any court concerning custody, possession, or placement of the child or access to or visitation with the child.
- The court does not have continuing jurisdiction concerning the child.

THIS CHILD HAS BEEN THE SUBJECT OF A COURT ACTION

The court with continuing jurisdiction concerning the child has given written approval for the execution of the authorization agreement accompanied by the following information:

- The county in which the court is located;
- The number of the court; and
- The cause number in which the order was issued or the litigation is pending.

Please staple a copy of the court's order to this agreement.



AUTHORIZATION AGREEMENT FOR NONPARENT RELATIVE OR VOLUNTARY CAREGIVER

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WARNINGS AND DISCLOSURES

This authorization agreement is an important legal document. The parent and the relative or voluntary caregiver must read all of the warnings and disclosures before signing this authorization agreement.

The parent and relative are not required to consult an attorney but are advised to do so.

A parent's rights as a parent may be adversely affected by placing or leaving the parent's child with another person.

This authorization agreement does not confer on the relative or voluntary caregiver the rights of a managing or possessory conservator or legal guardian.

A parent who is a party to this authorization agreement may terminate the authorization agreement and resume custody, possession, care, and control of the child on demand and at any time the parent may request the return of the child.

Failure by the relative or voluntary caregiver to return the child to the parent immediately on request may have criminal and civil consequences.

Under other applicable law, the relative or voluntary caregiver may be liable for certain expenses relating to the child in the relative's or voluntary caregiver's care, but the parent still retains the parental obligation to support the child.

In certain circumstances, this authorization agreement may not be entered into without written permission of the court. Examples of when court permission must be granted include when a court has entered a previous order granting custody or establishing a child support obligation.

This authorization agreement may be terminated by certain court orders affecting the child.

This authorization agreement does not supersede, invalidate, or terminate any prior authorization agreement regarding the child.

This authorization agreement is void if a prior authorization agreement regarding the child is in effect and has not expired or been terminated.

MAILING REQUIREMENTS:

When both parents do not sign the parent authorization agreement, a copy of the agreement **MUST** be mailed to the non-signing parent, unless that parent is deceased or has had his or her parental rights terminated. This authorization agreement is **void** unless:

1. The parties mail a copy of this agreement to a non-signing parent **not later than the 10th day** after the date the authorization agreement is signed, **by certified or international registered mail**, as applicable, **return receipt requested**.
2. If the parties do not receive a response from the non-signing parent before the 20th day after the date the copy of the agreement is mailed, the parties must mail a second copy of the agreement **by first class mail or international first class mail**, as applicable, to the parent **not later than the 45th day** after the date the authorization agreement is signed.

EXCEPTION TO MAILING REQUIREMENTS:

If a parent who did not sign the authorization agreement **does not have court-ordered possession of or access to the child who is the subject of the agreement**, the parent who is a party to the agreement does not have to mail a copy of the agreement to the non-signing parent if either of the following circumstances applies:

1. A protective order has been issued against the non-signing parent as provided under Chapter 85 of the Texas Family Code or under a similar law of another state for committing an act of family violence (as defined by Section 71.004 of the Texas Family Code) against the parent



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- who signed the agreement or any child of the parent who signed the agreement; or
2. The non-signing parent has been convicted of any of the following criminal offenses against the parent who signed the agreement or any child of the parent who signed the agreement:
 - o any offense under Title 5 of the Texas Penal Code (including murder, homicide, kidnapping, assault and sexual assault); or
 - o any other criminal offense in Texas or any other state if the offense involves a violent act or prohibited sexual conduct.

This authorization agreement (select one of the following two):

- Expires on this date: _____ OR
 Is valid until revoked in writing by either party

In addition, check here if you want the agreement to continue in effect after your death or during any period of incapacity.

Execution of a subsequent authorization agreement does not by itself supersede, invalidate, or terminate a prior authorization agreement.

By signing below, parent and the relative or voluntary caregiver acknowledge that they have each read this authorization agreement carefully, are entering into the authorization agreement voluntarily, and have read and understand all of the Warnings and Disclosures included in this authorization agreement.

<p>_____ PARENT Printed name:</p> <p>SUBSCRIBED AND ACKNOWLEDGED BEFORE ME on this ____ day of _____, 20____.</p> <p style="text-align: center;">_____ Notary Public in and for the State of TEXAS</p>
<p>_____ PARENT** Printed name:</p> <p>SUBSCRIBED AND ACKNOWLEDGED BEFORE ME on this ____ day of _____, 20____.</p> <p style="text-align: center;">_____ Notary Public in and for the State of TEXAS</p>
<p>_____ RELATIVE OR VOLUNTARY CAREGIVER Printed name:</p> <p>SUBSCRIBED AND ACKNOWLEDGED BEFORE ME on this ____ day of _____, 20____.</p> <p style="text-align: center;">_____ Notary Public in and for the State of TEXAS</p>

Form 2

[Caption. See form 35.]

**Original Petition for Removal of Disabilities of
Minority**

[Name of minor], Petitioner, a minor, petitions the Court to remove the disabilities of minority and would show the Court:

1. Petitioner intends that discovery be conducted under level 2 of rule 190 of the Texas Rules of Civil Procedure.

2. Petitioner is a resident of Texas who resides at [address, including county], and is either seventeen years of age or sixteen years of age and living separate and apart from [his/her] parents, managing conservator, or guardian.

3. [Petitioner's parents are deceased./Petitioner's only living parent is [name of father], father, who resides at [address]./Petitioner's only living parent is [name of mother], mother, who resides at [address]./Petitioner's parents are [name of father], father, who resides at [address] and [name of mother], mother, who resides at [address].]

If there is a managing conservator of the minor, include the following.

Petitioner's managing conservator is [name of managing conservator], [Petitioner's [mother/father], who resides at the address shown above/who resides at [address of nonparent managing conservator]].

If there is a guardian of the person and/or estate of the minor, include the following.

The guardian of the [person/estate/person and estate] of Petitioner is [name], who resides at [address, city, county, state].

4. Petitioner is self-supporting and manages [his/her] own affairs. The removal of the disabilities of Petitioner's minority is in [his/her] best interests because [specify].

5. Petitioner requests that the Court order the disabilities of minority removed [for all general purposes/for the limited purpose of [specify]].

Petitioner requests that the Court appoint an amicus attorney or an attorney ad litem as required by law and, after hearing this petition, order the removal of disabilities of minority as requested.

Respectfully submitted,

[Name]
Attorney for Petitioner
State Bar No.:
[Address]
[Telephone]
[Telecopier]

[Name of affiant], being duly sworn, on [his/her] oath, swears that: "I am the [mother/father/managing conservator/guardian of the person/guardian ad litem] in the above-entitled and -numbered cause. I have read and examined the foregoing Original Petition for Removal of Disabilities of Minority, and every statement contained in the petition is within my personal knowledge and is true and correct."

[Name of affiant]

SIGNED under oath before me on _____.

Notary Public, State of Texas

Form 3

[Caption. See form 35.]

Order Removing Disabilities of Minority

On [date], the Court heard the application of [name of minor], Petitioner, a minor, for an order removing the disabilities of minority. Petitioner appeared in person [and by attorney] and [name of guardian ad litem], duly appointed as guardian ad litem for Petitioner, personally appeared. After considering the verified pleading and hearing the evidence, the Court finds removal of the disabilities of minority to be in the best interest of Petitioner.

IT IS THEREFORE ORDERED that the disabilities of minority be removed as to [name of minor] for [all general purposes/the limited purpose of [specify purpose]].

SIGNED on _____.

JUDGE PRESIDING

Form 4

This form is based on the form found in Tex. Prob. Code § 490.

Statutory Durable Power of Attorney

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER XII OF THE TEXAS PROBATE CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, [name and address], appoint [name and address of person appointed] as my agent (attorney-in-fact) to act for me in any lawful way with respect to all of the following powers except for a power that I have crossed out below.

TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH POWER WITHHELD.

Real property transactions;

Tangible personal property transactions;

Stock and bond transactions;

Commodity and option transactions;

Banking and other financial institution transactions;

Business operating transactions;

Insurance and annuity transactions;

Estate, trust, and other beneficiary transactions;

Claims and litigation;

Personal and family maintenance;

Benefits from Social Security, Medicare, Medicaid, or other governmental programs or civil or military service;

Retirement plan transactions;

Tax matters.

IF NO POWER LISTED ABOVE IS CROSSED OUT, THIS DOCUMENT SHALL BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY AGENT (ATTORNEY-IN-FACT) SHALL HAVE THE POWER AND AUTHORITY TO PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I WERE PERSONALLY PRESENT.

SPECIAL INSTRUCTIONS:

Special instructions applicable to gifts:

Initial in front of the following sentence to have it apply.

_____ I grant my agent (attorney-in-fact) the power to apply my property to make gifts, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

YOU MAY GIVE SPECIAL INSTRUCTIONS BELOW LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

[Specify any special instructions.]

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

- (A) This power of attorney is not affected by my subsequent disability or incapacity.
- (B) This power of attorney becomes effective on my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED. IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent: [list name[s] and address[es]].

Date: _____

(Signature)

SIGNED under oath before me on _____

Notary Public, State of Texas

THE ATTORNEY-IN-FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

Form 5

This form permits a principal to designate an agent. The specific powers granted may be selected from the suggested powers shown in the form. Additional provisions that further limit the grant of power should be considered. This form of power of attorney is durable; that is, it survives the disability of the principal. Although the power of attorney may be made a springing power, effective on the disability of the principal, this form does not contain such a provision. The form must be filed for record in the county in which the real estate is located. Tex. Prob. Code § 489. See the Durable Power of Attorney Act, Tex. Prob. Code ch. XII.

See form 4 in this book for a statutory durable power of attorney based on Tex. Prob. Code § 490. Form 4 allows for broad, sweeping, detailed powers and can also be used for real estate transactions.

**Special Durable Power of Attorney
for Real Estate Transactions**

Date:

Principal:

Principal's Mailing Address:

Agent:

Agent's Mailing Address:

Effective Date:

[Expiration Date:]

Property:

Powers Given with Respect to the Property:

The following are suggested powers for the sale of real estate.

1. Enter into real estate listing agreements offering the Property for sale at any price on any terms and with any commission agreement.
2. Contract to sell the Property for any price on any terms.
3. Convey the Property.
4. Execute and deliver any legal instruments relating to the sale and conveyance of the Property, including but not limited to general and special warranty deeds binding Principal with vendor's liens retained or disclaimed as applicable or transferred to a third-party lender, affidavits (for example, federal tax statements), notices, disclosures, waivers, and designations.
5. Accept notes, deeds of trust, and other legal instruments.
6. Approve closing statements authorizing deductions from the sale price.
7. Receive Principal's net sales proceeds by check payable to Principal.
8. Indemnify and hold harmless any third party who accepts and acts under this Power of Attorney.

9. Do everything and sign everything necessary or appropriate to sell the Property and accomplish the powers set out.

The following are suggested powers for the purchase of real estate.

1. Contract to purchase the Property for any price on any terms.
2. Execute, deliver, and accept any legal instruments relating to the purchase of the Property and to any borrowing for the purchase, including but not limited to deeds, notes, deeds of trust, guaranties, and closing statements.
3. Approve closing statements authorizing payment of prorations and expenses.
4. Pay Principal's net purchase price from funds provided by Principal.
5. Indemnify and hold harmless any third party who accepts and acts under this power of attorney.
6. Do everything and sign everything necessary or appropriate to purchase the Property and accomplish the powers set out.

Continue with the following.

Principal appoints Agent to act for Principal in accordance with the powers given with respect to the Property, and Principal ratifies all acts done under this appointment. Agent's authority will begin on the Effective Date and

end [on the Expiration Date unless revoked sooner/only if revoked] by Principal's signing an instrument revoking this power of attorney and filing it for record in the real property records of [county] County, Texas. A signed and filed revocation instrument will be effective, without limitation or exception, including but not limited to being effective against a third party relying on this power of attorney without receipt of actual notice of the revocation, on the date and time of filing.

This is a durable power of attorney under chapter XII of the Texas Probate Code, which is not affected by subsequent disability or incapacity of Principal and will not lapse because of a passage of time [include if applicable: , but it will expire on the Expiration Date].

If applicable, the following paragraph is a suggested indemnity clause.

Principal binds Principal and Principal's heirs and personal representatives to indemnify and hold Agent harmless from all claims, demands, losses, damages, actions, and expenses that Agent may sustain or incur in connection with carrying out the authority granted to Agent in this power of attorney.

Continue with the following.

THE ATTORNEY-IN-FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

[Name of principal]

Include acknowledgment.

Affidavit of Attorney-in-Fact

Date:

Principal:

Principal's Mailing Address:

Effective Date of Power of Attorney:

Affiant: [name of attorney-in-fact]

Affiant's Mailing Address:

Affiant on oath swears that the following statements are true and within the personal knowledge of Affiant:

1. Affiant is the attorney-in-fact for Principal, having been appointed in the Power of Attorney.
2. The power of attorney has not been terminated by revocation, by Principal's death, by Principal's divorce or the annulment of the marriage of Principal if the attorney-in-fact is Principal's spouse, or by the qualification of a guardian of the estate of Principal.

[Name of attorney-in-fact]

SWORN TO AND SUBSCRIBED before me on _____
by [name of attorney-in-fact].

Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF [county]

This instrument was acknowledged before me on [date] by [name of attorney-in-fact].

Notary Public, State of Texas

Form 6

A medical power of attorney is not effective unless the principal first receives a disclosure in substantially the same form as the statutory disclosure entitled "Information Concerning Medical Power of Attorney." Tex. Health & Safety Code § 166.162. The principal must sign a statement acknowledging receipt of the disclosure and stating that he has read and understood its contents. Tex. Health & Safety Code § 166.162. This form is based on the form found in Tex. Health & Safety Code § 166.163. An acknowledgment of receipt of the disclosure statement is incorporated into the medical power of attorney designation of health-care agent, form 7 in this book.

Information Concerning Medical Power of Attorney

THIS IS AN IMPORTANT LEGAL DOCUMENT.

BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW

THESE IMPORTANT FACTS:

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convul-

sive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be eighteen years of age or older or a person under eighteen years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as

your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so, and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS SIGNED IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES. THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:

- (1) the person you have designated as your agent;
- (2) a person related to you by blood or marriage;
- (3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;
- (4) your attending physician;
- (5) an employee of your attending physician;
- (6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or
- (7) a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death.

Form 7

This form is based on the form found in Tex. Health & Safety Code § 166.164.

Medical Power of Attorney Designation of Health Care Agent

I, [name of principal], appoint [name, address, and telephone number of agent] as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

Limitations on the decision-making authority of my agent are as follows:
[specify].

Designation of Alternate Agent

(You are not required to designate an alternate agent, but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my

agents to make health care decisions for me as authorized by this document, who serve in the following order:

- A. First alternate agent: [name, address, and telephone number]

- B. Second alternate agent: [name, address, and telephone number]

The original of this document is kept at [specify location].

The following individual(s) or institution(s) have signed copies: [list name[s] and address[es] of each individual or institution].

Duration

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

[Include the following if applicable: This power of attorney ends on the following date: [date].]

Prior Designations Revoked

I revoke any prior medical power of attorney.

Acknowledgment of Disclosure Statement

I have been provided with a disclosure statement explaining the effect of this document. I have read and understand the information contained in the disclosure statement.

I sign my name to this durable power of attorney for health care on [date] at [address].

(Signature)

(Print Name)

Statement of First Witness

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

Signature: _____

Print Name: _____ Date: _____

Address: _____

Signature of Second Witness

Signature: _____

Print Name: _____ Date: _____

Address: _____

Form 8

This form is based on the form found in Tex. Health & Safety Code § 166.033.

Directive to Physicians and Family or Surrogates

This is an important legal document known as an Advance Directive. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences.

In addition to this advance directive, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

DIRECTIVE

I, **[name of principal]**, recognize that the best health care is based on a partnership of trust and communication with my physician. My physician and I will make health care decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time when I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:

Select one of the following.

___ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible.

Or

___ I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

Continue with the following.

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

Select one of the following.

___ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible.

Or

___ I request that I be kept alive in this irreversible condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

Continue with the following.

Additional Requests: (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificial nutrition and fluids, intravenous antibiotics, etc. Be sure to state whether you do or do not want the particular treatment.) [**Specify.**]

After signing this directive, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided, and I would not be given available life-sustaining treatments.

If I do not have a Medical Power of Attorney and I am unable to make my wishes known, I designate the following [person/persons] to make treatment decisions with my physician compatible with my personal values:

1. [Name]
2. [Name]

(If a Medical Power of Attorney has been executed, then an agent already has been named and you should not list additional names in this document.)

If the above persons are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas. If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort. I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant. This directive will remain in effect until I revoke it. No other person may do so.

SIGNED _____ [date], [city, county, state
of residence]

Two competent adult witnesses must sign below, acknowledging the signature of the declarant. The witness designated as Witness 1 may not be a person designated to make a treatment decision for the patient and may not be related to the patient by blood or marriage. This witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of a health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of a health care facility in which the

patient is being cared for or of any parent organization of the health care facility.

Witness 1 _____

Witness 2 _____

Definitions:

“Artificial nutrition and hydration” means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

“Irreversible condition” means a condition, injury, or illness:

- (1) that may be treated, but is never cured or eliminated;
- (2) that leaves a person unable to care for or make decisions for the person’s own self; and
- (3) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer’s dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the

patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

“Life-sustaining treatment” means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial hydration and nutrition. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient’s pain.

“Terminal condition” means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

Form 9

Authorization to Consent to Treatment of Minor

I, [name], am the [parent/guardian/managing conservator] of [name of minor], a minor child, and have the power to consent to medical treatment for [him/her]. [Include if applicable: [Name[s]] [is/are] [name of minor]'s [other parent/parents].] I authorize and appoint [name] as my agent to consent to medical treatment of the minor when I cannot be contacted to so consent, such medical treatment to include, without limitation, X-ray examination; anesthetic treatment; medical, dental, or surgical examination or treatment; and general hospital care. No prior determination of life-threatening emergency or danger of serious or permanent injury resulting from delay of treatment need be made under this authorization.

I will indemnify and hold harmless from any expense or claim of any nature any entity that provides or causes to be provided examination, treatment, or hospital care under this authorization (except to the extent such entity is negligent therein) and conditionally agree to make or cause to be made, by assignment of third-party benefits or otherwise, full and complete payment for such examination, treatment, or hospital care.

SIGNED on [date].

[Name of parent/guardian/managing
conservator]

Child's name: _____

Birth date: _____

Last tetanus immunization: _____

Allergies: _____

Hospitalization insurance co.: _____

Pediatrician: _____

Type of credit card: _____

Credit card number: _____

Name on credit card: _____

Expiration date: _____

Form 10

Caveat: This form is an example only and is not prescribed by statute. There is no case law upholding the use of such a statement, and it is unclear what the legal effect of such a statement is under Texas law.

A person who completes a statement of intent should discuss his intent with his attorney (when applicable), his family members, the persons designated to act for him in any advance directive or planning document, and others who care about him. Such persons should be given copies of the completed statement of intent.

An original, signed statement of intent should be kept at home and should be readily available so that it is accessible when needed. A copy should also be kept in a secure location with other directives and end-stage planning documents.

The statement of intent should be provided to and discussed with the patient's doctors. The patient should make sure the doctor understands his intent, agrees to follow his intent, and will include the statement in his medical record. The doctor should be asked to tell other doctors who may treat the patient to honor his intent.

A person who completes a statement of intent should take a copy of the statement with him and request that it be put in his medical record, if admitted to a hospital or a nursing home.

Statement of Intent for End-of-Life Planning

I, [name], make this statement of intent with regard to the following situations. This statement is in addition to and shall apply to any advanced directives I may have executed or shall hereafter execute. Initials in front of each paragraph of this addendum indicate my desire. If any item is not initialed, that item is not applicable.

- _____ No cardiopulmonary resuscitation (CPR) is to be performed in the hospital or emergency room unless done within [**specify time frame**] of cardiac arrest.
- _____ No gastrostomy (creation of a feeding tube to the stomach from the abdomen) is to be done unless I am mentally able to give my consent. If I have given my consent, subsequently become mentally unable to make decisions, and am unable to take nourishment by mouth after [**specify time frame**] of artificial fluid and nutrition support (via IVs, subclavian vein hyperalimentation, nasal gastric tube feeding, or gastrostomy feeding tubes), I direct all of these artificial means of nutrition be stopped.
- _____ No respirator is to be used longer than [**specify time frame**] (if the initial indication for its use was the inability to breathe caused by either a head injury or a stroke). A respirator may be used up to [**specify time frame**] if the indication of its use is pneumonia, chest injury, or similar illnesses.
- _____ In the event that a diagnosis of Alzheimer's disease (or other similar dementia) has been made, and if I have lost my ability to live at home because of the brain disease, I direct that no life-saving procedures be performed. I direct that there be no treatment of me for such illnesses as pneumonia, heart disease, sepsis (overwhelming infection), cancer, stroke, or similar situations. Injuries may be treated in the usual manner.

___ Radiation, chemotherapy, and repeated surgery for metastatic cancer is prohibited unless there is at least a [**percent**] percent chance of improving both my lifespan and quality of life for at least [**number**] months. U

___ Renal dialysis for longer than [**specify time frame**] is prohibited, unless I possess the capacity to give consent to a longer period of treatment.

___ If an injury results in quadriplegia (paralysis of all four extremities) plus the loss of ability to communicate for over [**specify time frame**], I direct that no supportive therapy be continued.

___ In the event I suffer a stroke (cerebral vascular accident), I direct that unless there is a strong probability (at least [**percent**] percent) of recovery of both my mental functions and the ability to communicate, plus the ability to care for myself (with minimal help), that all supportive measures and treatments not be extended longer than [**specify time frame**] from the onset of the stroke.

___ I request that adequate dosages of pain medication be used in any of the above situations, as well as in other unforeseen terminal illnesses or injuries, to give total relief of pain and discomfort, including the pain of mental anguish, even if this means using doses that exceed the usual amount and even if these higher dosages have a probability of toxicity such as adverse effects on the respiratory or cardiac rate. I recognize that euthanasia and assisted suicide are not legal in Texas but that relief of pain and dignity in death are recognized as legal.

___ In the event that I have elected to stop treatment or life support while possessing the mental capacity to do so, and my illness then progresses to the point that I can no longer make my own decisions, I direct that my decisions to stop treatment or life support be honored.

___ In the event I am hospitalized in an institution or under the care of a physician that will not honor my wishes as stated above, I direct that I be transferred to an institution, a hospice, or my home and to the care of a physician who will honor my directive.

___ A specific condition or situation I would like to address and my intent regarding that condition or situation is described as follows: **[specify]**.

As My Death Approaches

General

Select as applicable.

1. I want to die naturally at home, if possible.
2. I wish to know about options for hospice care to provide medical, emotional, and spiritual care for me and my loved ones.
3. I would like to have with me the following special possessions:
[specify].

Comfort and Personal Care

Select as applicable.

1. If I show signs of physical or mental distress, I want my caregivers to do whatever they can to help me.
2. I wish to have a cool moist cloth put on my head if I have a fever.
3. I want my lips and mouth kept moist to stop dryness.
4. I wish to have personal care like bathing, shaving, nail clipping, hair brushing, and teeth brushing, as long as they do not cause me pain or discomfort.
5. If I am not able to control my bowel or bladder functions, I wish for my clothes and bed linens to be kept clean and for them to be changed as soon as they can be if they have been soiled.

Surroundings

Select as applicable.

1. I would like to have the following family and friends present when possible: **[specify]**.
2. I wish to have my hand held and to be talked to when possible, even if I don't seem to respond to the voice or touch of others.

3. I wish to have others by my side praying for me when possible.
4. I wish to have religious readings and well-loved poems read aloud when I am near death.
5. I wish to have my favorite music played when possible until my time of death.
6. I wish to have pictures of my loved ones in my room, near my bed.

Advance Directives and Estate Planning Documents

I have completed the following document[s]:

Select as applicable.

1. Pre-Need Designation of Guardian. [Name] has [authority under/a copy of/authority under and a copy of] the document. [His/Her] contact information is: [specify].
2. Durable Power of Attorney for Healthcare. [Name] has [authority under/a copy of/authority under and a copy of] the document. [His/Her] contact information is: [specify].
3. Out-of-Hospital Do-Not-Resuscitate Order. [Name] has [authority under/a copy of/authority under and a copy of] the document. [His/Her] contact information is: [specify].

4. Directive to Physicians or Surrogates. [Name] has [authority under/a copy of/authority under and a copy of] the document. [His/Her] contact information is: [specify].

5. Durable Power of Attorney. [Name] has [authority under/a copy of/authority under and a copy of] the document. [His/Her] contact information is: [specify].

6. Last Will and Testament. [Name] has [authority under/a copy of/authority under and a copy of] the document. [His/Her] contact information is: [specify].

7. Inter Vivos (Living) Trust. [Name] has [authority under/a copy of/authority under and a copy of] the document. [His/Her] contact information is: [specify].

8. [Title of other advance directive or estate planning document]. [Name] has [authority under/a copy of/authority under and a copy of] the document. [His/Her] contact information is: [specify].

Following My Death

Select as applicable.

1. My instructions for a funeral or memorial service are as follows: [specify intentions for funeral or memorial service].

2. I would like the disposition of my remains to be [by burial/by cremation/by donation to **[specify to whom donation will be made]**].

3. I am a veteran or may have the right to burial in a veterans or other government cemetery as follows: **[specify burial rights]**.

4. I have previously made arrangements, and the contact person is: **[specify]**.

5. I have not previously made arrangements, and I would like my service to include: **[specify]**.

6. I would like the following people notified: **[specify]**.

7. I would like any charitable donations to be made to: **[specify]**.

8. I would like my announcement of death (obituary) to include: **[specify]**.

Additional Information

Additional restrictions, instructions, and directives may be added at any time. Any item listed above may be revoked or modified by me at any time.

The following people have copies of this statement of intent: **[specify names and contact information for individuals with copies of this statement]**.

Declarant

Date

Witness

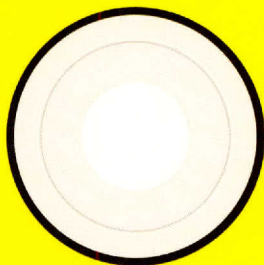
Witness

Witness Address Date

Witness Address Date

IMPORTANT!

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TexasBarBooks

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<http://www.texasbarcle.com/guardianship-alternatives-2012/>

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download and installation tips.

Form 11

Examination/Investigation Request

DL-76 (3/03)

Texas Department of Public Safety
Driver Improvement Bureau
P.O. Box 4087, Austin, TX., 78773-0320

Examination/Investigation Request

Please complete this form if you have personal knowledge about a driver you believe is no longer capable of safely operating a motor vehicle.
After reviewing this report, the Department may require the driver to take certain tests such as a vision, knowledge or driving test or provide other medical information.
The Department may release information contained in this report pursuant to a request under the Public Information Act or in response to a court order.

Form with fields: PERSONAL INFORMATION ON PERSON BEING REPORTED, PLEASE COMPLETE ALL AVAILABLE INFORMATION, NAME (LAST, FIRST, MIDDLE), DATE OF BIRTH, DRIVER LICENSE NUMBER, ADDRESS, CITY, STATE, ZIP CODE, LICENSE PLATE NUMBER, PHONE NUMBER.

Describe in detail incidents related to or conditions about this driver which indicate the inability to safely operate a motor vehicle. Give specific dates, locations, accident reports, possible medical conditions and all other information which supports the need for testing or evaluation. You should report only information of which you have personal knowledge or physical evidence.

Multiple horizontal lines for providing detailed incident or condition information.

PERSON COMPLETING REQUEST, IT IS A VIOLATION OF THE TEXAS PENAL CODE TO INTENTIONALLY FILE A FALSE REPORT. ANY PERSON WHO INTENTIONALLY FILES A FALSE REPORT MAY BE SUBJECT TO CRIMINAL PROSECUTION. Fields include: PRINT FULL NAME (LAST, FIRST, MIDDLE), RELATIONSHIP TO DRIVER, TELEPHONE NUMBER, ADDRESS, CITY, STATE, ZIP CODE, SIGNATURE, DATE.

Form 12

This form is based on the form found in Tex. Prob. Code § 679. This form may be modified to omit references to alternate designations, to appoint only a guardian of the person or estate, or to omit the disqualifying language, as appropriate.

**Designation of Guardian in Event of Later Incapacity
or Need of Guardian**

I, **[name of declarant]**, make this Designation of Guardian, to operate if the need for a guardian for me later arises.

1. I designate **[name]** to serve as guardian of my person, **[name]** as first alternate guardian of my person, **[name]** as second alternate guardian of my person, and **[name]** as third alternate guardian of my person.

2. I designate **[name]** to serve as guardian of my estate, **[name]** as first alternate guardian of my estate, **[name]** as second alternate guardian of my estate, and **[name]** as third alternate guardian of my estate.

3. If any guardian or alternate guardian dies, does not qualify, or resigns, the next named alternate guardian becomes my guardian.

4. I expressly disqualify the following **[person/persons]** from serving as guardian of my person: **[name[s]]**.

5. I expressly disqualify the following **[person/persons]** from serving as guardian of my estate: **[name[s]]**.

SIGNED on _____

[Name of declarant]

Witness

Witness

Self-Proving Affidavit

Before me, the undersigned authority, on this date personally appeared the declarant, and [name] and [name] as witnesses and, all being duly sworn, the declarant said that the above instrument was [his/her] Designation of Guardian and that the declarant had made and executed it for the purposes expressed in the designation. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the designation, that they signed the designation as witnesses, and that the declarant appeared to them to be of sound mind.

Declarant

Affiant

Affiant

SIGNED under oath before me on _____.

Notary Public, State of Texas

Form 13

This form is based on the form found in Tex. Prob. Code § 677A. This form may be modified to omit references to alternate designations and to also appoint a guardian of the estate of the children, as appropriate.

Declaration of Appointment of Guardian for My Children in Event of Death or Incapacity

I, [name], make this declaration to appoint as guardian for my child[ren], listed as follows, in the event of my death or incapacity: [name[s] of child[ren]].

I designate [name] to serve as guardian of the person of my child[ren], [name] as first alternate guardian of the person of my child[ren], [name] as second alternate guardian of the person of my child[ren], and [name] as third alternate guardian of the person of my child[ren].

I direct that the guardian of the person of my child[ren] serve [with/without] bond.

Include the following if applicable.

I designate [name] to serve as guardian of the estate of my child[ren], [name] as first alternate guardian of the estate of my child[ren], [name] as second alternate guardian of the estate of my child[ren], and [name] as third alternate guardian of the estate of my child[ren].

Continue with the following.

If any guardian or alternate guardian dies, does not qualify, or resigns, the next named alternate guardian becomes guardian of my child[ren].

SIGNED on _____

[Name of declarant]

Witness

Witness

Self-Proving Affidavit

Before me, the undersigned authority, on this date personally appeared the declarant and [name] and [name] as witnesses and, all being duly sworn, the declarant said that the above instrument was [his/her] Declaration of Appointment of Guardian for the Declarant's Children in the Event of Declarant's Death or Incapacity and that the declarant had made and executed it for the purposes expressed in the declaration. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the declaration as witnesses, and that the declarant appeared to them to be of sound mind.

Declarant

Affiant

Affiant

SIGNED under oath before me on _____.

Notary Public, State of Texas

Form 14

This form is based on the form found in Tex. Civ. Prac. & Rem. Code § 137.011.

Declaration for Mental Health Treatment

I, [**name**], being an adult of sound mind, willfully and voluntarily make this declaration for mental health treatment to be followed if it is determined by a court that my ability to understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment, is impaired to such an extent that I lack the capacity to make mental health treatment decisions. “Mental health treatment” means electroconvulsive or other convulsive treatment, treatment of mental illness with psychoactive medication, and preferences regarding emergency mental health treatment.

Include the following paragraph if applicable.

I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include: [**specify**].

Continue with the following.

Psychoactive Medications

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychoactive medications are as follows:

Select one or more of the following as applicable.

I consent to the administration of the following medications: **[specify]**.

And/Or

I do not consent to the administration of the following medications: **[specify]**.

And/Or

I consent to the administration of a federal Food and Drug Administration approved medication that was only approved and in existence after my declaration and that is considered in the same class of psychoactive medications as stated below: **[specify]**.

Continue with the following.

Conditions or limitations: **[specify]**.

Convulsive Treatment

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding convulsive treatment are as follows:

Select one of the following.

I consent to the administration of convulsive treatment.

Or

I do not consent to the administration of convulsive treatment.

Continue with the following.

Conditions or limitations: **[specify]**.

Preferences for Emergency Treatment

In an emergency, I prefer the following treatment **FIRST** (circle one):

Restraint/Seclusion/Medication

In an emergency, I prefer the following treatment **SECOND** (circle one):

Restraint/Seclusion/Medication

In an emergency, I prefer the following treatment **THIRD** (circle one):

Restraint/Seclusion/Medication

I prefer a [male/female] to administer restraint, seclusion, and/or medications:

Options for treatment before use of restraint, seclusion, and/or medications: [specify].

Conditions or limitations: [specify].

Additional Preferences or Instructions

[Specify any additional preferences or instructions.]

Conditions or limitations: [specify].

Signature of principal: _____

Date: _____

Statement of Witnesses

I declare under penalty of perjury that the principal's name has been represented to me by the principal, that the principal signed or acknowledged this declaration in my presence, that I believe the principal to be of sound mind, that the principal has affirmed that the principal is aware of the nature of the document and is signing it voluntarily and free from duress, that the principal requested that I serve as witness to the principal's execution of this docu-

ment, and that I am not a provider of health or residential care to the principal, an employee of a provider of health or residential care to the principal, an operator of a community health care facility providing care to the principal, or an employee of an operator of a community health care facility providing care to the principal.

I declare that I am not related to the principal by blood, marriage, or adoption and that to the best of my knowledge I am not entitled to and do not have a claim against any part of the estate of the principal on the death of the principal under a will or by operation of law.

Witness Signature: _____

Print Name: _____ Date: _____

Address: _____

Witness Signature: _____

Print Name: _____ Date: _____

Address: _____

NOTICE TO PERSON MAKING A DECLARATION FOR MENTAL HEALTH TREATMENT

This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:

This document allows you to make decisions in advance about mental health treatment and specifically three types of mental health treatment: psychoactive medication, convulsive therapy, and emergency mental health treatment. The instructions that you include in this declaration will be followed only if a court believes that you are incapacitated to make treatment decisions. Otherwise, you will be considered able to give or withhold consent for the treatments.

This document will continue in effect for a period of three years unless you become incapacitated to participate in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapacitated.

You have the right to revoke this document in whole or in part at any time you have not been determined to be incapacitated. **YOU MAY NOT REVOKE THIS DECLARATION WHEN YOU ARE CONSIDERED BY A COURT TO BE INCAPACITATED.** A revocation is effective when it is communicated to your attending physician or other health care provider.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This declaration is not valid unless it is signed by two qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.

Form 15

[Caption. See form 35.]

Debtor's Statement—Small Estates

[Name of debtor], Debtor, whose address is [address, city, state], tenders to the county clerk of [county] County, Texas, in accordance with the terms and provisions of section 887 of the Texas Probate Code, the amount of \$[amount], being not more than \$100,000 as specified by statute, for the use and benefit of [name of creditor], Creditor, whose Social Security number is [number] and whose address is [address, city, state].

Debtor states that Creditor is a resident of the state of Texas and [is a minor, whose date of birth is [date]/has the following disability: [specify]].

Debtor states that the amount of money tendered above is the amount due Creditor on a liquidated and uncontested claim against Debtor arising out of the following transaction: [specify].

Debtor requests that the county clerk issue a receipt for the amount of money in accordance with the terms of section 887 of the Texas Probate Code and further that Creditor be advised as required by law.

SIGNED on [date].

[Name of debtor]

Form 16

[Caption. See form 35.]

**Application to Withdraw Funds under
Texas Probate Code Section 887**

This Application to Withdraw Funds under Texas Probate Code Section 887 is brought by [name of applicant], Applicant, who shows in support:

1. [Name of creditor], Creditor, is [a minor/an incapacitated person].
2. The domicile of Creditor is [address].
3. [Name of debtor] on [date] deposited with the clerk of the Court of [county] County, Texas, the amount of \$[amount] in accordance with the terms and provisions of section 887(a) of the Texas Probate Code for the use and benefit of Creditor.
4. Applicant's relationship to Creditor is the [father/mother/unes-tranged spouse/custodian] of Creditor. [Include if applicable: Creditor has no spouse, and [his/her] parents [are deceased/do not reside in the state of Texas].]
5. The bond of Applicant accompanies this application and is at least double the amount now on deposit as stated above. But in no event is the bond less than two hundred dollars.

6. It would be in the best interest and welfare of Creditor if the above-mentioned amount were withdrawn from the trust account of the county clerk and delivered to Applicant for the use and benefit of Creditor.

Applicant prays that this application and the accompanying bond be approved and that the county clerk be ordered to deliver the above-described funds to Applicant for the use and benefit of Creditor. Applicant prays for all further relief to which Applicant may be entitled.

Respectfully submitted,

[Name]
Attorney for Applicant
State Bar No.:
[Address]
[Telephone]
[Telecopier]

Applicant
[Address]
[Telephone]

SIGNED under oath before me on _____.

Notary Public, State of Texas

Form 17

[Caption. See form 35.]

Order to Release Funds

On [date] the Court considered the Application to Withdraw Funds of [name of applicant], Applicant.

The Court finds that Applicant has recently incurred extraordinary expenses as a result of [state facts, including name of minor child or incapacitated person] and that Applicant, pursuant to section 887 of the Texas Probate Code, has obtained a bond for double the amount requested herein made payable to the judge or the judge's successors in office and to be conditioned that the custodian will use the money for the creditor's benefit under the directions of the Court. The Court further finds that reasonable and necessary attorney's fees in the amount of \$[amount] were required for representation in this matter.

IT IS ORDERED that, as authorized by section 887 of the Texas Probate Code, the county clerk of [county] County, Texas, be ordered to immediately release the amount of \$[amount] to [name of applicant], to be used for [specify] for [name of minor child or incapacitated person].

All other relief not expressly granted herein is denied.

SIGNED on _____.

JUDGE PRESIDING

Form 18

[Caption. See form 35.]

**Motion to Create Texas Property Code
Section 142 Trust**

This Motion to Create a Texas Property Code Section 142 Trust for the benefit of [name of minor or incapacitated person] is brought by [name of movant], Movant, as [next friend/guardian ad litem] of [name of minor or incapacitated person], who shows in support:

Select one of the following.

Select the following if judgment is not yet entered.

1. This Court is about to enter its final judgment in the above-entitled and -numbered cause, and [name of minor or incapacitated person] will be awarded \$[amount]. At that time, such funds will be subject to being paid into the registry of this Court because [name of minor or incapacitated person] is [a minor/an incapacitated person].

Or

Select the following if judgment is already entered.

1. On [date] this Court entered its final judgment in the above-entitled and -numbered cause, and [name of minor or incapacitated person] was

awarded \$[amount], free and clear of all costs, expenses, and fees. The funds were then paid into the registry of this Court.

Select one of the following.

Select the following if the beneficiary is a minor.

2. [Name of minor] was born on [date] and is a minor, age [age] as of the filing of this motion. [Name of minor] currently resides at [address]. Movant is the [next friend/guardian ad litem] for [name of minor]. There is no court-ordered guardianship pending with respect to [name of minor] at this time. Movant is of the opinion that it would be in the best interests of [name of minor] to have the amount awarded to [him/her] held in trust for [his/her] benefit in accordance with section 142.005 of the Texas Property Code, until [he/she] attains age [age]. It is the opinion of Movant that [name of minor] will not have sufficient maturity to properly manage and invest that sum of money on attaining [his/her] majority at age eighteen. Moreover, it is the opinion of Movant that such a large amount of money should be invested and managed by a corporate trustee, which is in the business of managing large amounts of money, rather than allowing the money to remain in the Court's registry.

Or

Select the following if the beneficiary is an incapacitated person.

2. [Name of incapacitated person] was born on [date] and is an incapacitated person as defined by section 142.007 of the Texas Property Code,

inasmuch as [he/she] lacks sufficient understanding or capacity to make or communicate responsible decisions concerning [his/her] financial affairs. [Name of incapacitated person] currently resides at [address]. Movant is the [next friend/guardian ad litem] for [name of incapacitated person]. Movant is of the opinion that [name of incapacitated person] will not have sufficient capacity to properly manage and invest such an amount of money until [he/she] regains capacity. Moreover, it is the opinion of Movant that such a large amount of money should be invested and managed by a corporate trustee, which is in the business of managing large amounts of money, rather than allowing the money to remain in the Court's registry.

Continue with the following.

3. Movant has asked [name of proposed trustee] to act as trustee of the trust if this Court agrees that such a trust should be created. Movant understands that [name of proposed trustee] is willing to act as trustee.

4. Movant and [name of proposed trustee] have agreed on the terms of such a trust, and a proposed trust agreement reflecting those terms accompanies this motion.

[Name of movant] prays that this Court create a Texas Property Code section 142.005 trust for the benefit of [name of minor or incapacitated person] in accordance with the terms and provisions of the trust agreement filed with this motion. Movant prays for all further relief to which Movant may be entitled.

Respectfully submitted,

[Name]

Attorney for Movant

State Bar No.:

[Address]

[Telephone]

[Telecopier]

Certificate of Service

I certify that in accordance with the Texas Rules of Civil Procedure I served a true and correct copy of [title of document, e.g., Motion for Leave to Resign as Guardian] on the parties listed below. This service was made by [method of service, e.g., certified mail, properly addressed, return receipt requested, in a postpaid envelope deposited with the United States Postal Service].

[Name]

Attach proposed trust agreement along with proposed trustee's fee schedule.

Form 19

[Caption. See form 35.]

**Order Creating Texas Property Code
Section 142 Trust**

On [date] the Court considered the Motion to Create a Texas Property Code Section 142 Trust of [name of movant], as [next friend/guardian ad litem] of [name of minor or incapacitated person], [a minor/an incapacitated person], requesting the Court to establish a trust for [name of minor or incapacitated person] under section 142.005 of the Texas Property Code. The Court, having considered the evidence presented, the argument of counsel, and the terms of the trust instrument filed with the motion and signed by the proposed trustee[s], which is incorporated herein for all purposes by this reference, finds that [name of minor or incapacitated person] is [a minor/an incapacitated person as defined by section 142.007 of the Texas Property Code], and that the trust is in the best interests of the [minor/incapacitated person] and should be created under the authority of section 142.005 of the Texas Property Code.

IT IS THEREFORE ORDERED that the funds awarded to [name of minor or incapacitated person] under the final judgment in the above-entitled and -numbered cause shall be held in trust for the benefit of the [minor/incapacitated person] in accordance with section 142.005 of the Texas Property Code and according to the terms of the attached trust agreement.

IT IS FURTHER ORDERED that [name[s] of trustee[s]] [is/are] hereby appointed trustee[s] of the trust. IT IS FURTHER ORDERED that approval is hereby granted the trustee[s] to charge reasonable fees for [his/her/its/their] trust services at the rates and in the manner provided for in the trust agreement.

SIGNED on _____

JUDGE PRESIDING

Form 20

Terms of Trust and Agreement of Trustee

This instrument establishes the terms of a trust created for the benefit of [name of minor or incapacitated person], [a minor/an incapacitated person], under the order of the [designation] Court of [county] County, Texas, under the authority of section 142.005 of the Texas Property Code, as amended.

1. *Trustee.* The trustee of the trust is [name of trustee], Trustee. On receipt of the funds constituting the corpus of this trust, Trustee's duties will commence in accordance with the terms of this trust agreement. No bond or other security is required of Trustee or of any successor trustee.

2. *Beneficiary.* The sole and only beneficiary of the trust is [name of minor or incapacitated person], Beneficiary.

3. *Trust Estate.* The trust will be funded with the amount of \$[amount] (plus any accrued interest), which was awarded to Beneficiary as a result of a settlement or final judgment in Cause No. [number], styled "[style of case]," in the [designation] Court of [county] County, Texas. This amount of money will constitute the initial principal of the trust that, together with all other properties hereafter acquired by the trust and all income therefrom, will constitute the trust estate of the trust.

4. *Distributions from Trust.* Trustee will pay to or apply for the benefit of Beneficiary such amounts out of the net income and principal (if income is insufficient) of the trust as are reasonably necessary in the sole discretion of Trustee to provide for the health, education, support, or maintenance of Beneficiary. Any such income not so distributed will be added to the principal of the trust.

In making any discretionary payments to Beneficiary, Trustee will consider (a) the standard of living to which Beneficiary has been accustomed before the creation of the trust; (b) any increase in Beneficiary's standard of living that should occur as a result of the size, anticipated income, and financial return of the trust and the feasibility of sustaining such an increased standard of living; (c) any known resources of Beneficiary; (d) the ability of any person who is legally obligated to support Beneficiary to do so; and (e) the ability of Beneficiary to earn funds for Beneficiary's own support and maintenance except while obtaining an education.

Trustee may make any distribution required or permitted hereunder, without the intervention of any guardian or other legal representative, in any of the following ways in Trustee's sole reasonable discretion: (a) to Beneficiary directly, (b) to the legal or natural guardian of Beneficiary, (c) to any person having custody of Beneficiary, or (d) by using the distribution directly for Beneficiary's benefit.

5. *Revocability.* This trust may not be revoked, altered, or amended by Beneficiary or any guardian or other legal representative of Beneficiary, but it will remain subject to amendment, modification, or revocation by the [design-
nation] Court at any time before the termination of the trust.

6. *Spendthrift Provision.* Before the actual receipt of any distribution of any portion of the trust estate by Beneficiary, no property (whether income or principal) of the trust will be subject to anticipation or assignment by Beneficiary or to attachment by or interference or control of any creditor or assignee of Beneficiary or be taken or reached by any legal or equitable process in satisfaction of any debt or liability of Beneficiary. Any attempted transfer or encumbrance of any interest in the trust estate of the trust by Beneficiary before its actual distribution will be void. To the extent allowed by law, no distribution from the trust will be made to satisfy any obligation of Beneficiary if such obligation would otherwise be met from any federal or state assistance program if the trust had not been created.

7. *Trustee's Investment Authority.* Trustee will invest the trust estate in accordance with the standards now or hereafter set forth in title 9 of the Texas Property Code (Texas Trust Code) (or any subsequent applicable law), and Trustee may also invest all or any part of the trust estate in one or more common trust funds now or hereafter established by Trustee pursuant to sections 113.171 and 113.172 of the Texas Property Code.

8. *Trustee's Compensation and Expenses.* Trustee will be entitled to receive for Trustee's services a fair and reasonable compensation determined in accordance with the then-customary and prevailing charges for similar services charged by corporate fiduciaries in [city, county] County, Texas, but Trustee's compensation will not exceed the compensation provided by Trustee's then-published fee schedule for such services. Trustee will also be reimbursed for all reasonable expenses incurred by Trustee in connection with the trust. The fees and expenses allowed hereunder have been approved by the [designation] Court at the inception of the trust, but the [designation] Court may review such fees and expenses at any time on the [designation] Court's own motion or at the instance of Trustee or any other party interested in the welfare of Beneficiary, and on a hearing of the matter, the [designation] Court will take any action with respect to such fees and expenses as the [designation] Court may deem appropriate. Trustee expressly agrees to reimburse to the trust any fees previously paid to Trustee by the trust if the [designation] Court orders Trustee to do so.

9. *Administrative Provisions.* In the administration of the trust, Trustee will be authorized and empowered—

- (a) to exercise all powers granted by Texas Property Code section 142.005 as now or hereafter amended and to trustees of express trusts by the Texas Property Code or any corresponding statute, except in any instance in which the Texas Property

Code or such other statutory provision may conflict with the express provisions of this trust agreement, in which case the provisions of this trust agreement will control.

- (b) to adjust, arbitrate, compromise, abandon, sue on or defend, and otherwise deal with and settle all claims in favor of or against the trust. To engage and retain attorneys or accountants at any time that it may be reasonably necessary to provide for the prudent management and preservation of the trust.
- (c) to continue to act as Trustee of the trust regardless of any change of name of Trustee and regardless of any reorganization, merger, or consolidation of Trustee.

10. *Miscellaneous.* The trust will be held and administered under the following terms and conditions:

- (a) Trustee will keep books of account respecting the trust and all transactions involving the trust and will furnish to Beneficiary, or to the person having the care and custody of Beneficiary if Beneficiary is then under a legal disability, statements at least quarterly showing receipts and disbursements of income and corpus of the trust and a list of assets held in the trust. Trustee will also furnish such statements to the [designated] Court on request.

- (b) No person or entity dealing with Trustee will be obligated to see to the application of any money or property paid or delivered to Trustee, and no person or entity will be obligated to inquire into the expediency or propriety of any transaction on the authority of Trustee to enter into and consummate any transactions on terms Trustee deems reasonably appropriate.
- (c) Trustee may not resign as trustee of the trust without receiving prior authority from the [designiation] Court.
- (d) The headings appearing in this instrument are for convenience only and do not purport to define or limit the scope or intent of the provisions to which they refer.

11. *Inception of Trust.* This trust will become effective on (a) the effective date of the court order that authorizes its creation, (b) the transfer of the above-stated amount of money to Trustee, and (c) Trustee's acceptance of the trust, which will be evidenced by the signature below of the appropriate officer of Trustee. This trust is created by operation of law as it is implemented herein by the [designiation] Court, and to the extent permitted by law neither Beneficiary nor the [designiation] Court is the grantor of this trust.

SIGNED in multiple originals, any one of which will be deemed an original for all purposes on [date].

Trustee
[Name and title of representative]
[Name of entity]

SIGNED under oath before me on _____.

Notary Public, State of Texas

Form 21

[Caption. See form 35.]

**Order for Distribution of [Minor's/
Incapacitated Person's] Funds**

On [date] the Court considered the motion of [name of movant], as [next friend/guardian ad litem] of [name of minor or incapacitated person], [a minor/an incapacitated person], requesting that the Court establish a trust for the [minor/incapacitated person] under Texas Property Code section 142.005. [Include if applicable: Also appearing was [name of guardian], guardian ad litem for the [minor/incapacitated person].] The Court, having considered the evidence presented, the argument of counsel, and the terms of the trust instrument filed with the motion and signed by the proposed trustee, which is incorporated herein for all purposes by this reference, hereby finds that [name of minor or incapacitated person] is [a minor/an incapacitated person as defined by section 142.007 of the Texas Property Code], and this trust is in the best interests of the [minor/incapacitated person] and should be created under the authority of section 142.005 of the Texas Property Code.

IT IS THEREFORE ORDERED that the funds awarded to the [minor/incapacitated person] under the final judgment in the above-entitled and -numbered cause shall be held in trust for the benefit of the [minor/incapaci-

tated person] under section 142.005 of the Texas Property Code and under the terms of the trust agreement attached hereto as Exhibit [exhibit number/letter].

IT IS FURTHER ORDERED that [name of trustee] is hereby appointed sole trustee of the trust[./.]

Include the following if funds are already in the registry of the court.

and the [district/county] clerk is hereby ORDERED to pay to the trustee for the benefit of the [minor/incapacitated person] all amounts awarded herein to the [minor/incapacitated person] (including any interest earned thereon).

Continue with the following.

IT IS FURTHER ORDERED that approval is hereby granted to the trustee to charge a reasonable fee for its trust services at the rates and in the manner provided for in the trust agreement.

SIGNED on _____.

JUDGE PRESIDING

Attach exhibit(s).

Form 22

[Caption. See form 35.]

**Application to Create Management Trust for
Benefit of [name of ward]**

[Name of guardian], Applicant, guardian of the estate of [name of ward], files this Application to Create Management Trust for Benefit of Ward under section 867 of the Texas Probate Code and shows the following in support:

Describe the source of the trust estate. The following is an example.

The [designation] Court of [county] County, Texas, is about to enter a judgment in Cause No. [number], styled “[style of case],” in which [name of ward], Ward, will be awarded the sum of \$[amount].

Continue with the following.

Applicant is the guardian of the estate of Ward. Applicant believes that it would be in the best interests of Ward if the money awarded were held in a management trust for the benefit of Ward according to section 867 of the Texas Probate Code.

Applicant has requested that [name of proposed trustee], Proposed Trustee, of [city], Texas, be permitted to act as trustee of this trust if the Court agrees that such a trust should be created. Applicant understands that Proposed Trustee has agreed to act as trustee. Proposed Trustee is a trust company hav-

ing trust powers in the state of Texas and is therefore qualified to serve as trustee of a trust created according to section 867 of the Texas Probate Code.

Applicant and Proposed Trustee have agreed on the terms of a proposed trust agreement that complies with the provisions of sections 867 through 873 of the Texas Probate Code and that accompanies this application as Exhibit [exhibit number/letter].

Applicant prays that the Court create a management trust for the benefit of Ward under the terms of section 867 of the Texas Probate Code, that Proposed Trustee be appointed the trustee of the trust, and that approval be given for the payment from the trust of reasonable fees to Proposed Trustee for its services as trustee under the terms of the trust agreement, which accompanies this application. Applicant prays for all further relief to which Applicant may be entitled.

Respectfully submitted,

[Name]

Attorney for Applicant

State Bar No.:

[Address]

[Telephone]

[Telecopier]

Attach exhibit(s).

Form 23

[Caption. See form 35.]

Management Trust

This agreement establishes the terms of a management trust created for the benefit of [name of beneficiary], Beneficiary, in accordance with the order of the [designation] Court of [county] County, Texas, under the authority of section 867 of the Texas Probate Code.

1. *Trustee.* The trustee of the trust will be [name of trustee], Trustee. Trustee's address is [address, city, county] County, Texas. On receipt of the funds constituting the corpus of the Trust, Trustee's duties will begin in accordance with the terms of the trust. No bond or other security is required of Trustee or any successor trustee. However, Trustee currently maintains a financial institution bond in the amount of \$[amount]. Trustee hereby agrees to maintain that bond or a similar bond subject to the reasonable commercial availability of such bonds. Trustee agrees to notify the Court within five days of learning that a bond is no longer available.

2. *Beneficiary.* The sole beneficiary of the trust is Beneficiary, who was born on [date of birth]. Beneficiary currently resides at [address, city, county] County, Texas.

3. *Trust Estate.* The trust will be funded with cash in the sum of \$[amount] [describe funding, e.g., , which will be awarded to the trust on behalf of Beneficiary as a result of a judgment in Cause No. [number], styled “[style of case],” in the [designation] Court of [county] County, Texas]. This money will constitute the initial principal of the trust, which, together with all other properties acquired by the trust and all income therefrom, will constitute the trust estate of the trust.

Modify the following paragraph if the trust is to be a “special needs” trust to include “special needs” provisions and to eliminate references to “health, education, support, or maintenance.” See section 26.5.

4. *Distributions from the Trust.* Trustee will pay to or apply for the benefit of Beneficiary such amounts out of the net income and principal (if income is insufficient) of the trust as are in the sole discretion of Trustee reasonably necessary to provide for the health, education, support, or maintenance of Beneficiary, subject to any applicable Texas Probate Code provisions. Any income not distributed will be added to the principal of the trust.

In making any discretionary payments to Beneficiary, Trustee will consider (a) the standard of living to which Beneficiary was accustomed before the creation of the trust, (b) any known resources of Beneficiary, (c) the ability of any person who is legally obligated to support Beneficiary to do so, and (d) any present or future Texas Probate Code provisions governing the use and expenditure of funds held in management trusts.

Trustee may make any distribution required or permitted under the trust, without the intervention of any guardian or other legal representative, in any of the following ways: (a) to the legal or natural guardian of Beneficiary or to any person who has physical custody of Beneficiary; (b) to any person furnishing care, education, support, or maintenance to Beneficiary; or (c) by using the distribution directly for the benefit of Beneficiary.

No distribution from the trust may be made to or for the benefit of Beneficiary to satisfy any obligation if that obligation would otherwise be met from any federal or state assistance program if the trust had not been created. Trustee will not be responsible for making such a determination nor will Trustee be held liable for any distribution made in good faith that results in the loss of any federal or state assistance or for any distribution made pursuant to an order of any state agency requiring distribution for the benefit of Beneficiary.

Trustee is specifically authorized to pay accounting fees for preparation of Beneficiary's personal income tax return and to pay any income tax owed by Beneficiary or the trust that is attributable to income generated by the trust.

Note: If the beneficiary is a minor, the trust must terminate when the beneficiary is twenty-five years old. Tex. Prob. Code § 870(a). However, some courts will not permit a section 867 trust to extend beyond the ward's eighteenth birthday.

5. *Termination.* The trust will terminate when [Beneficiary turns [age]/the Court determines Beneficiary to be no longer incapacitated or on the

death of Beneficiary]. On termination, Trustee will pay all of the remaining trust estate of the Trust to Beneficiary, free of any further trust or, if Beneficiary is then deceased, to the personal representative of Beneficiary's estate.

6. *Revocability.* This trust may not be amended, altered, or revoked by Beneficiary or any guardian or other legal representative of Beneficiary but remains subject to amendment, modification, or revocation by the Court at any time before the termination of the Trust.

7. *Spendthrift Provision.* Before the actual receipt of any distribution of any portion of the trust estate by Beneficiary, no property (whether income or principal) of the trust will be subject to anticipation or assignment by Beneficiary or to attachment by or the interference or control of any creditor or assignee of Beneficiary or be taken or reached by any legal or equitable process in satisfaction of any debt or liability of Beneficiary. Any attempted transfer or encumbrance of any interest in the trust estate by Beneficiary before its actual distribution will be void. In addition to being applicable to Beneficiary, this paragraph also applies to anyone other than Beneficiary who may be entitled to any portion of the trust estate on termination of the trust.

8. *Trustee's Investment Authority.* Trustee will invest the trust estate in accordance with the standards in chapter 113 of title nine of the Texas Property Code as amended or with any subsequent applicable law. Trustee may also invest all or any part of the trust estate in a common trust fund now or hereafter established by Trustee pursuant to the Texas Trust Code. The invest-

ments must be in federally insured, interest-bearing time or deposit accounts or obligations backed by the United States government or its agencies or instrumentalities or in mutual funds composed primarily of securities issued by the United States government or its agencies or instrumentalities and managed by investment management organizations having in excess of \$10 billion in assets under management.

9. *Trustee's Compensation and Expenses.* Trustee will be entitled to be paid a fair and reasonable compensation for its services out of the trust assets, either annually, quarterly, or monthly, at its option. Compensation will be in accordance with customary and prevailing charges for similar services charged by corporate fiduciaries in [city, county] County, Texas and in compliance with the existing guardianship compensation statutes. Trustee's compensation will not exceed Trustee's then-published fee schedule. Trustee will be entitled to recover from the trust all reasonable expenses incurred by Trustee in administration of the trust. Trustee's initial fee and expense schedule has been attached to this trust agreement and approved by the Court at the inception of the trust, but the Court will review all trustee fees and expenses incurred and paid annually and will consider such paid fees in light of the then-prevailing charges for similar services by corporate fiduciaries in [city, county] County, Texas. The Court may, on its own motion or at the request of Trustee or any other party interested in the welfare of Beneficiary, take any action it deems proper with respect to such fees and expenses.

Trustee's fee schedule attached to this trust agreement constitutes the basis for Trustee's compensation, subject only to review by the Court on an annual basis.

10. *Administrative Provisions.* In the administration of the trust, Trustee will be authorized and empowered—

- a. to exercise all the powers now or hereafter granted to trustees of express trusts by the Texas Trust Code or any corresponding statutes, except that in any instance in which the Texas Trust Code, the provisions applicable to management trusts created under the Texas Probate Code, or other statutory provision may conflict with the express provisions of this trust agreement, the provisions of this trust agreement will control; and
- b. to adjust, arbitrate, compromise, abandon, sue on, defend, or otherwise deal with and settle all claims in favor of or against the trust and to engage and retain attorneys or accountants at any time reasonably necessary to provide for the prudent management and preservation of the trust.

11. *Miscellaneous.* The trust also will be held and administered under the following terms and conditions:

- a. The Trust will be governed in all respects by the laws of the state of Texas; jurisdiction and venue will lie in Texas in all matters involving the trust and those persons acting in connection with the trust.
- b. Trustee will keep account books for the trust and all transactions involving the Trust and will furnish Beneficiary, or the person having the care and custody of Beneficiary if Beneficiary is then under a legal disability, statements at least quarterly showing receipts and disbursements of income and corpus of the trust and a list of assets held by the trust. Trustee will prepare and file with the Court regular annual accounts and, on the termination of the trust, a final account. All accounts will be prepared and filed in the same manner and form required of a guardian under chapter XIII of the Texas Probate Code. Trustee will provide copies of all accounts to any then-serving guardian of Beneficiary's person and any then-serving guardian of Beneficiary's estate. All accounts are subject to court review and approval in the same manner as provided in the Texas Probate Code. Trustee will not be responsible or liable to Beneficiary or any other person on account of any actions that Trustee may take or fail to take in Trustee's good-faith reliance on any order or proceeding of the Court.

- c. No person or entity dealing with Trustee under the trust will be obligated to see to the application of any money or property paid or delivered to Trustee, and no such person or entity will be obligated to inquire into the expediency or propriety of any transaction or the authority of Trustee to enter into and consummate any such transaction on terms Trustee may deem reasonably appropriate.
- d. Trustee may not resign as trustee of the trust, nor may another trustee be substituted in place of Trustee, without receiving prior authority from the Court to do so. If the trusteeship should become vacant, or on Trustee's submission of an application to resign, the power to appoint a successor will be exercisable by the Court alone.
- e. The headings in this trust agreement are for convenience only and do not define or limit the scope or intent of the provisions to which they refer.
- f. If any portion of this trust agreement is contrary to any applicable law or to the applicable rules and regulations of any authority regulating the activities of Trustee, the conflicting provision will be deemed deleted, and a provision as nearly alike in tenor, effect, and reading as will comply with such laws, rules, and regulations will be substituted in its place.

12. *Inception of the Trust.* This trust becomes effective on the entry of the order to which this trust agreement is attached and the transfer of the above-described money to Trustee.

SIGNED on [date].

Trustee

[Name and title of representative]

[Name of entity]

The form and content of this trust instrument are hereby approved.

[Name of guardian]

Guardian

This instrument was acknowledged before me on [date] by [name of representative], as [capacity] of [name of trustee] as trustee, a state trust corporation, on behalf of the corporation.

Notary Public, State of Texas

Form 24

[Caption. See form 35.]

**Application for Establishment of Subaccount
with [name of trust] Pooled Trust**

[Name of applicant], Applicant, [guardian of the [person/estate/person and estate] of [name of ward], Ward/[specify other relationship to ward] of [name of ward], Ward], respectfully makes this Application for Establishment of Subaccount with [name of trust] Pooled Trust and shows the Court as follows:

1. Applicant is the [guardian of the [person/estate/person and estate]/[specify relationship to ward]] in the above-entitled and -numbered cause [pursuant to an order of this Court dated [date]]. Ward is [a minor/an adult/a disabled person], aged [number] years, as of the filing of this application [include if applicable: and has been adjudicated by this Court as an incapacitated person].

2. Applicant believes that it would be in the best interest of Ward to have Ward's estate, in its entirety, paid and transferred into a subaccount of a pooled trust because of the savings in administrative costs, court costs, and legal fees that would otherwise result under current law.

3. Applicant also believes that the guardianship of Ward's estate should then be closed.

4. Applicant has asked [name of trustee], Trustee, to act as trustee of the trust subaccount in the event this Court agrees that such a trust should be created. [Name of trustee] is the trustee of a trust that meets the requirements of 42 U.S.C. § 1396p(d)(4)(C) as specified in section 910(3) of the Texas Probate Code. [Name of trustee] is qualified and willing to act as the trustee.

5. Applicant and Trustee have agreed on the terms of a trust that complies with the statutory requirements of section 914 of the Texas Probate Code. The agreed terms are set forth in the Terms of Trust and Agreement of Trustee attached as Exhibit [exhibit number/letter] to this application.

Applicant prays that, on proper notice to all persons entitled to receive notice of this application, the Court grant this application and—

- a. order the establishment of a subaccount of a pooled trust for the benefit of Ward in accordance with section 913 of the Texas Probate Code;
- b. approve the Terms of Trust and Agreement of Trustee attached as Exhibit [exhibit number/letter] to this application;
- c. appoint [name of trustee] as Trustee of such subaccount;

- d. direct [name of guardian] to deliver Ward's estate to Trustee, in trust, on approval of [name of guardian]'s account for final settlement;
- e. expressly hold this guardianship open for the purpose of accepting, reviewing, and approving Trustee's annual accountings and fee applications as required by the Texas Probate Code; and
- f. grant any further relief to which Applicant may be justly entitled.

Respectfully submitted,

[Name]
Attorney for Applicant
State Bar No.:
[Address]
[Telephone]
[Telecopier]

Attach exhibit(s).

Form 25

[Caption. See form 35.]

Order Establishing Subaccount of Pooled Trust

On [date], the Court considered the Application for Establishment of Subaccount with Pooled Trust of [name of applicant], [guardian of the [person/estate/person and estate] of [name of ward], Ward/[specify other relationship to ward] of [name of ward], Ward]. The Court has read the application and heard all evidence in support of the application. As there are no objections to the application, the Court finds that:

1. This Court has jurisdiction and venue of this cause.
2. Notice of the application has been given to those persons as required by the Texas Probate Code.
3. Citation has been personally served on Ward in accordance with the law.
4. It is in the best interests of Ward, pursuant to section 913 of the Texas Probate Code, to establish a subaccount of a pooled trust with [name of trust] for the benefit of Ward.
5. The [name of trust] meets the requirements of 42 U.S.C. § 1396p(d)(4)(C) as specified in section 910(3) of the Texas Probate Code.

6. It is in the best interest of Ward for the following assets to be transferred to a subaccount with [name of trustee] to be held in the name of Ward and for the benefit of Ward: [specify assets to be transferred].

IT IS THEREFORE ORDERED that:

1. [Name of guardian] shall establish a subaccount with [name of trustee] in the name of [name of ward], of which [name of ward] is the beneficiary, as a less restrictive alternative to the appointment of a guardian of the estate for [name of ward].

2. The following assets shall be transferred to a subaccount with [name of trust] to be held in the name of [name of ward] and for the benefit of [name of ward]: [specify assets as indicated above].

SIGNED on _____

JUDGE PRESIDING

Form 26

[Caption. See form 35.]

Application for Order of No Administration

[Name of surviving spouse], Applicant, as surviving spouse of [name of decedent], Decedent, [include if applicable: and on behalf of [name[s] of minor child[ren] and/or adult incapacitated child[ren]], the [minor child[ren] of Decedent/adult incapacitated child[ren] of Decedent/minor child[ren] and adult incapacitated child[ren] of Decedent]], furnishes the following information to the Court in support of [his/her] Application for Order of No Administration:

1. Applicant is an individual interested in the estate of Decedent, domiciled in and residing at [address of surviving spouse], and is the surviving spouse of Decedent.

Include one or both of the following if applicable.

[Name[s] of minor child[ren]] [is an individual/are individuals] interested in the estate, domiciled in and residing at [address of minor child[ren]], and [is/are] the minor child[ren] of Decedent.

[Name[s] of adult incapacitated child[ren]] [is an individual/are individuals] interested in the estate, domiciled in and residing at [address of adult incapacitated child[ren]], and [is/are] the adult incapacitated child[ren] of Decedent.

Continue with the following.

2. Decedent died on [date], at [address where decedent died, including county], at the age of [number] years. Four years have not elapsed since the death of Decedent.

3. This Court has jurisdiction and venue because Decedent had a fixed place of residence and domicile in this county on the date of death.

4. Decedent owned the following real and personal property: [specify, including value for each].

The liens and encumbrances on the above-described property are as follows: [specify].

Select one of the following.

5. Decedent died intestate. The names of the heirs of Decedent, and their relationships to Decedent, are: [specify].

Or

5. Decedent left a last will and testament dated [date], which was never revoked and is filed with this application as Exhibit [exhibit number/letter]. The names of the beneficiaries in the will are: [specify].

Continue with the following.

6. The creditors of Decedent, and the amounts owed to each, are as follows: **[specify]**.

Applicant respectfully requests that this Court make a family allowance and that, if the entire assets of the estate, not including homestead and exempt property, are thereby exhausted, assets be set aside for Applicant **[select if applicable]**: and Decedent's minor child[ren]/and Decedent's adult incapacitated child[ren]/and Decedent's minor child[ren] and adult incapacitated child[ren]]. Applicant further requests that the Court issue an Order of No Administration.

Applicant further prays that this Court consider this application without notice or, in the alternative, after such notice as this Court may require, and that the Court grant the relief requested and all further relief to which Applicant may be entitled.

Respectfully submitted,

[Name]
Attorney for Applicant
State Bar No.:
[Address]
[Telephone]
[Telecopier]

Attach exhibit(s).

Form 27

[Caption. See form 35.]

Order of No Administration

On [date], the Court heard the Application for Order of No Administration filed herein by [name of applicant], Applicant, in the estate of [name of decedent], Decedent.

The Court considered the application [without notice as authorized by Texas Probate Code section 140/and finds that notice has been given as required by this Court].

The Court finds that—

1. the facts contained in the application are true;
2. the expenses of [list expenses related to death, e.g., last illness, funeral charges] and of this proceeding have been paid or secured;
3. the value of the estate's assets is greater than the amount required for a family allowance; and
4. the estate's assets will be exhausted after a family allowance is made herein.

IT IS THEREFORE ORDERED that the following estate assets are set aside for [specify family members] as a family allowance pursuant to Texas Probate Code section 287: [specify estate assets].

IT IS FURTHER ORDERED that there shall be no administration of this estate.

IT IS FURTHER ORDERED that all persons owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, and all persons purchasing from or otherwise dealing with the estate, shall immediately pay or transfer those assets to the surviving spouse [select if applicable: and minor child[ren]/and adult incapacitated child[ren]/and minor child[ren] and adult incapacitated child[ren]] named herein.

SIGNED on _____

JUDGE PRESIDING

Form 28

This form is based on the form found at Tex. Prop. Code § 141.010(b).

**Transfer under Texas Uniform Transfers
to Minors Act**

I, [name of transferor or name and representative capacity if a fiduciary], hereby transfer to [name of custodian], as custodian for [name of minor] under the Texas Uniform Transfers to Minors Act, the following: [describe the custodial property sufficiently to identify it].

SIGNED on [date].

[Name of transferor]

[Name of custodian] acknowledges receipt of the property described above as custodian for the minor named above under the Texas Uniform Transfers to Minors Act.

[Name of custodian]

Form 29

This form is used for the sale of a minor's real or personal property if no guardian has been appointed for the minor's person or estate. The sale is usually in the form of a private sale. If real property is involved, most sales will be conducted through a title company, and a proposed closing statement should accompany the application.

[Caption. See form 35.]

**Application for Sale of Property under
Texas Probate Code Section 889**

This Application for Sale of Property under Texas Probate Code Section 889 is brought by [name of applicant], Applicant, a [parent/managing conservator] of [name of minor], Minor, a minor, who shows in support:

1. Applicant is the [mother/father/managing conservator] of Minor.
2. The existence of certain property of Minor, which is described in Exhibit [exhibit number/letter] attached hereto and incorporated herein for all purposes, has come to the attention of Applicant.

Include the following if applicable.

3. Minor acquired the ownership interest in this property from [describe source from which title was obtained].

Continue with the following.

4. Applicant seeks this Court's permission to sell the ownership interest of Minor in this property and to place the proceeds of the sale in the registry of this Court.

5. This Court has venue over this application in that **[state venue facts]**.

6. Applicant furnishes this Court with certain additional information as follows—

- a. the ownership interest held in the property is **[specify]**;
- b. the proposed purchaser's name is **[name]**;
- c. the appraised value of the property is **[\$amount]**;
- d. the sales price offered for this property is **[\$amount]**;
- e. the net proceeds to be deposited into the registry of this Court after the payment of all costs of sale are **[\$amount]**; and
- f. this sale is to be conducted at **[describe the location or manner of transfer]**.

7. The sale of this property will be for cash.

8. All funds received from the sale will be for the use and benefit of Minor.

9. It is necessary and advisable to sell the interest in this property, as permitted by section 889 of the Texas Probate Code, because there is no need for the creation of a guardianship of the estate at this time.

Applicant requests that citation be issued as required by law and that, after a hearing on this application, the Court enter its order authorizing Applicant to sell the property as may be authorized by law.

Respectfully submitted,

Applicant

BEFORE ME, the undersigned authority, on this day personally appeared [name], who after being duly sworn stated that the statements contained in this application are true and correct based on the information and belief of Applicant.

SIGNED under oath before me on _____.

Notary Public, State of Texas

[Name]

Attorney for Applicant

State Bar No.:

[Address]

[Telephone]

[Telecopier]

Attach exhibit(s). For a sale involving real property, attach a proposed closing statement.

Form 30

[Caption. See form 35.]

**Order for Sale of Property under Texas Probate Code
Section 889**

On [date] the Court considered the Application for Sale of Property under Texas Probate Code Section 889 of [name of applicant], and after considering the evidence presented in support of the application, the Court finds the following:

1. The application was verified by affidavit and showed that the minor has certain [real/personal/real and personal] property proposed to be sold pursuant to the requirements of section 889 of the Texas Probate Code.
2. A description of the property sought to be sold is contained in Exhibit [exhibit number/letter] attached to and made a part of this order.
3. The sale sought in the foregoing application appears reasonable, necessary, and advisable.
4. The application should be granted, the property sold, and the funds deposited into the registry of this Court.

IT IS THEREFORE ORDERED that the property described in this order will be sold for cash in the net amount of \$[amount], and the net pro-

ceeds will be forwarded to the county clerk of this county for deposit into the registry of this Court.

SIGNED on _____.

JUDGE PRESIDING

Attach exhibit(s).

Form 31

This form may be used if a guardian has been appointed for the person but there is no need for appointment of a guardian of the estate. The sale is usually in the form of a private sale. If real property is involved, most sales will be conducted through a title company, and a proposed closing statement should accompany the application.

[Caption. See form 35.]

**Application for Sale of Property under
Texas Probate Code Section 890**

This Application for Sale of Property under Texas Probate Code Section 890 in the absence of a guardian of the estate is brought by [name of guardian], Guardian, guardian of the person of [name of ward], Ward, an incapacitated person, who shows in support:

1. Guardian was duly appointed and qualified as guardian of the person of Ward on [date].
2. Certain [real/personal/real and personal] property of Ward, more specifically described in Exhibit [exhibit number/letter] attached hereto and incorporated herein for all purposes, has come to the attention of Guardian.
3. As guardian of the person, Guardian seeks this Court's permission to sell Ward's interest in the property and place the proceeds of the sale in the registry of this Court.

4. This Court has venue over this application as this Court appointed **[name of guardian]** as guardian of Ward's person.

5. Guardian furnishes this Court with additional information as follows—

- a. the ownership interest held in the herein-described property is **[specify]**;
- b. the proposed purchaser's name is **[name]**;
- c. the appraised value of the property is **[\$[amount]]**;
- d. the sales price offered for this property is **[\$[amount]]**;
- e. the net proceeds to be deposited in the registry of this Court after payment of all costs of sale are **[\$[amount]]**; and
- f. this sale is to be conducted at **[describe location or manner of transfer]**.

6. The sale of this property will be for cash.

7. All funds received from the sale will be for the use and benefit of Ward.

8. It is necessary and advisable to sell Ward's interest in this property, as permitted by section 890 of the Texas Probate Code, because there is no need for the creation of a guardianship of the estate at this time.

[Name of guardian] requests that citation be issued as required by law and that, after a hearing on this application, the Court enter its order authorizing [name of guardian] as guardian of the person to sell the described property at a private sale on the terms set forth above or as may be authorized by law.

Respectfully submitted,

Applicant

BEFORE ME, the undersigned authority, on this day personally appeared [name], who, after being duly sworn stated that the statements contained in this application are true and correct based on the information and belief of Applicant.

SIGNED under oath before me on _____

Notary Public, State of Texas

[Name]

Attorney for Applicant

State Bar No.:

[Address]

[Telephone]

[Telecopier]

Attach exhibit(s). For a sale involving real property, attach a proposed closing statement.

Form 32

[Caption. See form 35.]

**Order for Sale of Property under
Texas Probate Code Section 890**

On [date] the Court considered the Application for Sale of Property under Texas Probate Code Section 890 filed by [name of guardian], Guardian, the guardian of the person of [name of ward], Ward, an incapacitated person. After considering the evidence presented in support of the application, the Court finds the following:

1. The application was verified by affidavit, showing that Ward has certain [real/personal/real and personal] property that Guardian proposes to sell under section 890 of the Texas Probate Code.
2. A description of the property sought to be sold is contained in Exhibit [exhibit number/letter] attached to and made a part of this order.
3. The sale sought in the foregoing application appears reasonable, necessary, and advisable.
4. The application should be granted, the property sold, and the funds from the sale deposited into the registry of this Court.

IT IS THEREFORE ORDERED that the property described in this order be sold by [name of guardian] for cash in the net amount of \$[amount] and the net proceeds be forwarded to the county clerk of this county for deposit in the registry of this Court.

SIGNED on _____.

JUDGE PRESIDING

Attach exhibit(s).

Form 33

[Caption. See form 35.]

Application for Appointment of Receiver

[Name of applicant], Applicant, seeks the appointment of a receiver pursuant to Texas Probate Code section 885 to take charge of the estate for the protection, conservation, and preservation of the estate on the following grounds:

1. [Name of [ward/proposed ward]], [Ward/Proposed Ward], is [an incapacitated person/a minor] who resides at [address of [ward/proposed ward]] in this county.
2. [Ward/Proposed Ward] [is subject to a guardianship of the person/ is subject to a guardianship in the state of [name of state] and there is no guardian of the estate who is qualified in this state/is not subject to a guardianship in this state for the reason that [state reason]].
3. The estate of [Ward/Proposed Ward] is in danger of injury, loss, or waste because [describe circumstances].
4. The endangered estate of [Ward/Proposed Ward] is located at [specify address] and described as follows: [describe specific property in detail and indicate its nature and value].

5. This Court has jurisdiction and venue over this proceeding.

6. The appointment of a receiver is a less restrictive alternative to the appointment of a guardian of the estate at this time.

Applicant respectfully requests—

1. [that the Court fix the time and date for hearing this application/
that the Court act without notice];

2. on hearing this application, that the Court appoint [name of
receiver], or such other person as the Court deems qualified, as receiver of
[specify property] and that an appropriate surety bond be set;

3. that the receiver be given the following duties and powers: [specify
powers, e.g., the power to take possession of and safeguard the property, the
power to manage the business of the [incapacitated person/minor], the power
to enter into contracts to continue the business of the [incapacitated person/
minor], the power to pay the ongoing expenses of the business and make pay-
roll, etc.]; and

4. all other and further relief to which Applicant may be justly enti-
tled.

Respectfully submitted,

[Name]

Attorney for Applicant

State Bar No.:

[Address]

[Telephone]

[Telecopier]

BEFORE ME, the undersigned authority, on this day personally appeared [name of applicant], the applicant in the foregoing Application for Appointment of Receiver, known to me to be the person whose name is subscribed to the above and foregoing application, and who, on [his/her] oath, stated that the application contains a correct and complete statement of the matters to which it relates and all the contents are true to the best of Applicant's knowledge.

[Name of applicant]

SIGNED under oath before me on _____.

Notary Public, State of Texas

Certificate of Service

I certify that in accordance with the Texas Rules of Civil Procedure I served a true and correct copy of [**title of document, e.g.**, Motion for Leave to Resign as Guardian] on the parties listed below. This service was made by [**method of service, e.g.**, certified mail, properly addressed, return receipt requested, in a postpaid envelope deposited with the United States Postal Service].

List the name and address of each party or attorney served.

SIGNED on _____.

[Name of attorney]

Form 34

[Caption. See form 35.]

Order Appointing Receiver

On [date], the Court considered the Application for Appointment of Receiver, and the Court finds that:

1. [Name of [ward/proposed ward]], [Ward/Proposed Ward], is [an incapacitated person/a minor] who resides at or is located at [address of [ward/proposed ward]].
2. [Ward/Proposed Ward] is [subject to a guardianship of the person/subject to a guardianship in the state of [name of state] and there is no guardian of the estate who is qualified in this state/not subject to a guardianship in this state for the reason that [state reason]].
3. The estate of [Ward/Proposed Ward] is in danger of injury, loss, or waste because: [describe circumstances].
4. The endangered estate of [Ward/Proposed Ward] is located in [specify address] and described as follows: [identify and describe specific property in detail and indicate its nature and value].
5. This Court has jurisdiction and venue over this proceeding.

6. The appointment of a receiver is a less restrictive alternative to the appointment of a guardian of the estate at this time.

7. A receiver of the property of [Ward/Proposed Ward] should be appointed for the protection, conservation, and preservation of the estate.

8. [Name of appointed receiver] is deemed qualified by the Court to be appointed as receiver.

IT IS THEREFORE ORDERED that the application be granted and that:

1. [Name of appointed receiver] is appointed as receiver of the property of [name of [ward/proposed ward]] and granted authority over the property of [name of [ward/proposed ward]] for the protection, conservation, and preservation of the estate.

2. The receiver shall be given the following duties and powers: [specify powers, e.g., the power to take possession of and safeguard the property, the power to manage the business of the [ward/proposed ward], the power to enter into contracts to continue the business of the [ward/proposed ward], the power to pay the ongoing expenses of the business and make payroll, etc.].

3. The receiver shall give bond in the amount of \$[amount], conditioned as required by law.

4. On the filing and approval of the receiver's bond as required, the clerk of the Court shall issue a certified copy of this order showing the authority of the receiver herein.

5. When the estate is no longer liable to injury, loss, or waste, the receiver shall report to the Court, file with the clerk a full and final sworn account, and apply to deliver the estate to those persons entitled to receive the same and to seek discharge.

SIGNED on _____.

JUDGE PRESIDING

Form 35

Although no statute or rule prescribes the form for identifying in the caption the state court in which the petition is filed, the court and county should be named. If one of several courts may hear the case, as in counties with several district courts and county courts at law, the caption should have a blank on which the clerk can write the appropriate number when the petition is filed. The court designations set out below are recommended for captions. The generally accepted appearance for captions in Texas pleadings has the cause number at the top center of the first page, the parties on the left, the court designation on the right, and a dividing line between the two, as set out below. Some counties may reverse the appearance of the court and cause number.

Sample Captions

District Court

	No. [number]	
[Name]	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	OF [county] COUNTY, TEXAS
v.	§	
	§	
[Name]	§	
Defendant	§	[Number] JUDICIAL DISTRICT

Constitutional County Court

	No. [number]	
[Name]	§	IN THE COUNTY COURT
Plaintiff	§	
	§	OF [county] COUNTY, TEXAS
v.	§	
	§	
[Name]	§	
Defendant	§	

Unnumbered County Court at Law

No. [number]

[Name]	§	IN THE COUNTY COURT AT LAW
Plaintiff	§	
	§	OF [county] COUNTY, TEXAS
v.	§	
	§	
[Name]	§	
Defendant	§	

Numbered County Court at Law

No. [number]

[Name]	§	IN THE COUNTY COURT AT LAW
Plaintiff	§	
	§	NUMBER [number] OF
v.	§	[county] COUNTY, TEXAS
	§	
[Name]	§	
Defendant	§	

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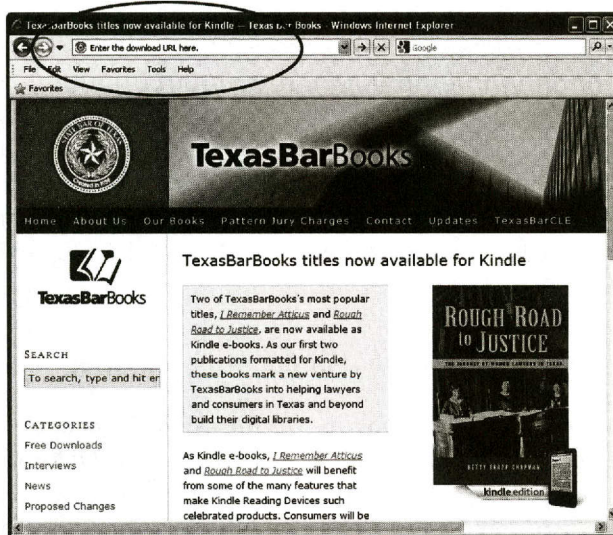
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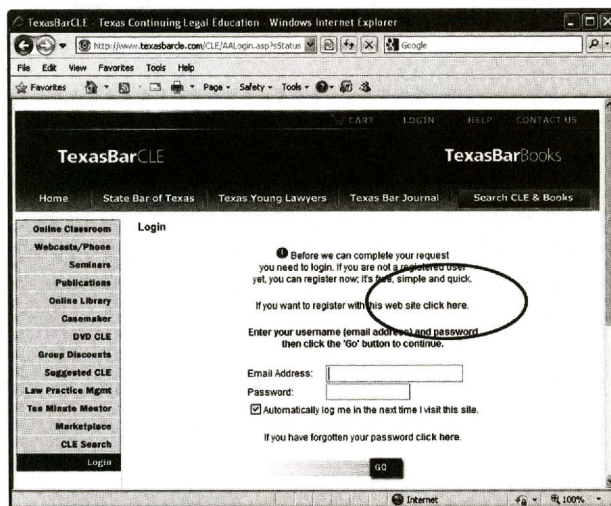
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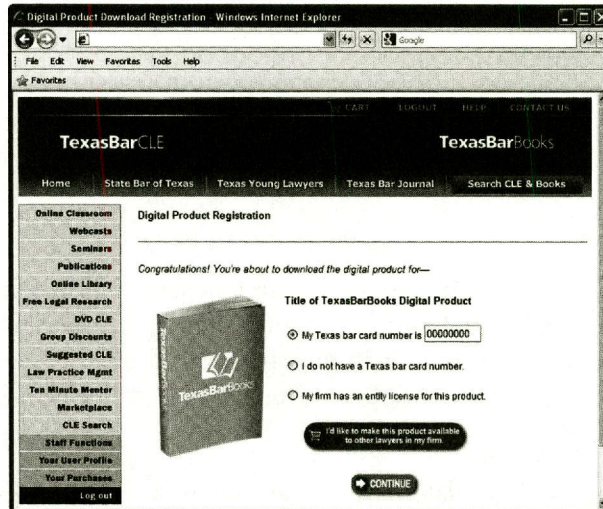
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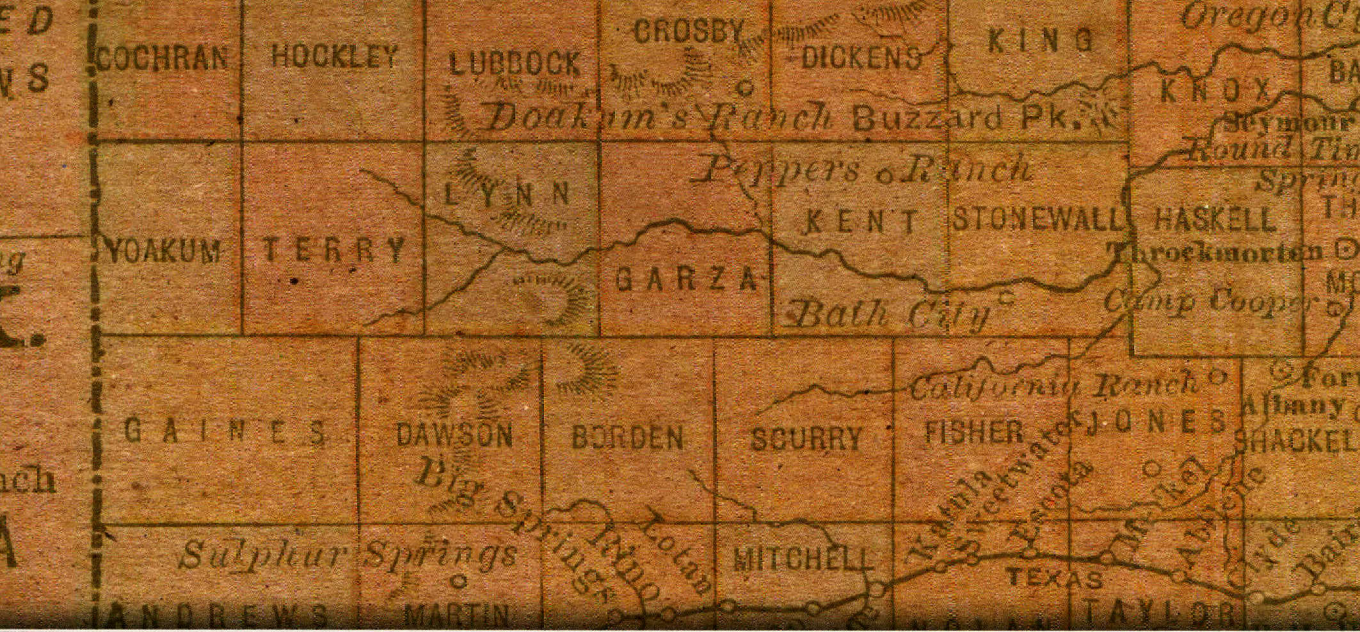
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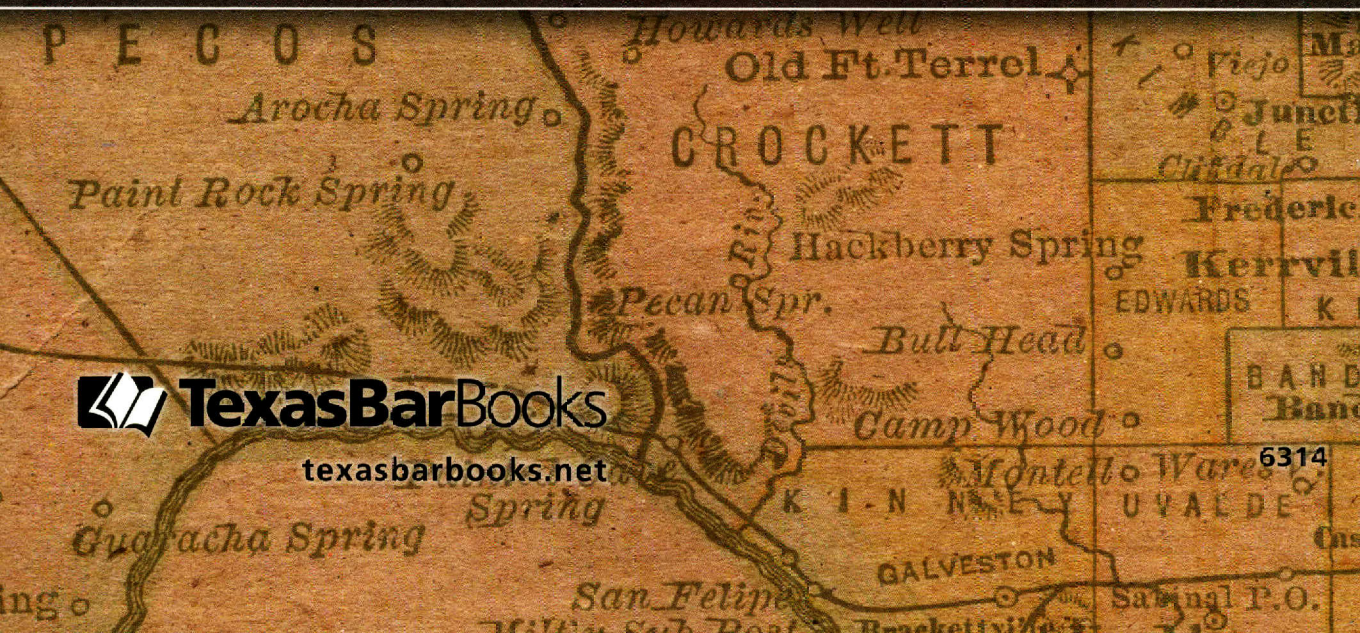
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