

AN ACT

relating to estates and to guardianships, substitutes for guardianships, and durable powers of attorney for persons with disabilities or who are incapacitated.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. (a) Section 361.052, Estates Code, is amended to read as follows:

Sec. 361.052. REMOVAL WITH NOTICE. (a) The court may remove a personal representative on the court's own motion, or on the complaint of any interested person, after the representative has been cited by personal service to answer at a time and place set [~~fixed~~] in the notice, if:

(1) sufficient grounds appear to support a belief that the representative has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or part of the property entrusted to the representative's care;

(2) the representative fails to return any account required by law to be made;

(3) the representative fails to obey a proper order of the court that has jurisdiction with respect to the performance of the representative's duties;

(4) the representative is proved to have been guilty of gross misconduct, or mismanagement in the performance of the representative's duties;

1 (5) the representative:
2 (A) becomes incapacitated;
3 (B) is sentenced to the penitentiary; or
4 (C) from any other cause, becomes incapable of
5 properly performing the duties of the representative's trust; or

6 (6) the representative, as executor or administrator,
7 fails to[+]

8 [~~(A)~~] make a final settlement by the third
9 anniversary of the date letters testamentary or of administration
10 are granted, unless that period is extended by the court on a
11 showing of sufficient cause supported by oath[~~, or~~

12 [~~(B) timely file the affidavit or certificate~~
13 ~~required by Section 308.004~~].

14 (b) If a personal representative, as executor or
15 administrator, fails to timely file the affidavit or certificate
16 required by Section 308.004, the court, on the court's own motion,
17 may remove the personal representative after providing 30 days'
18 written notice to the personal representative to answer at a time
19 and place set in the notice, by certified mail, return receipt
20 requested, to:

- 21 (1) the representative's last known address; and
- 22 (2) the last known address of the representative's
23 attorney of record.

24 (b) Section 404.0035, Estates Code, is amended to read as
25 follows:

26 Sec. 404.0035. REMOVAL OF INDEPENDENT EXECUTOR WITH NOTICE.

27 (a) The probate court, on the court's own motion, may remove an

1 independent executor appointed under this subtitle after providing
2 30 days' written notice of the court's intention to the independent
3 executor, requiring answering at a time and place set in the notice
4 ~~[of the court's intent to remove the independent executor]~~, by
5 certified mail, return receipt requested, to the independent
6 executor's last known address and to the last known address of the
7 independent executor's attorney of record, if the independent
8 executor:

9 (1) neglects to qualify in the manner and time
10 required by law; ~~[or]~~

11 (2) fails to return, before the 91st day after the date
12 the independent executor qualifies, either an inventory of the
13 estate property and a list of claims that have come to the
14 independent executor's knowledge or an affidavit in lieu of the
15 inventory, appraisement, and list of claims, unless that deadline
16 is extended by court order; or

17 (3) fails to timely file the affidavit or certificate
18 required by Section 308.004.

19 (b) The probate court, on its own motion or on motion of any
20 interested person, after the independent executor has been cited by
21 personal service to answer at a time and place set ~~[fixed]~~ in the
22 notice, may remove an independent executor when:

23 (1) the independent executor fails to make an
24 accounting which is required by law to be made;

25 (2) ~~[the independent executor fails to timely file the~~
26 ~~affidavit or certificate required by Section 308.004,~~

27 ~~[(3)]~~ the independent executor is proved to have been

1 guilty of gross misconduct or gross mismanagement in the
2 performance of the independent executor's duties;

3 (3) [~~(4)~~] the independent executor becomes an
4 incapacitated person, or is sentenced to the penitentiary, or from
5 any other cause becomes legally incapacitated from properly
6 performing the independent executor's fiduciary duties; or

7 (4) [~~(5)~~] the independent executor becomes incapable
8 of properly performing the independent executor's fiduciary duties
9 due to a material conflict of interest.

10 (c) Section [1023.003](#), Estates Code, is amended to read as
11 follows:

12 Sec. 1023.003. [~~APPLICATION FOR~~] TRANSFER OF GUARDIANSHIP
13 TO ANOTHER COUNTY. (a) When a guardian or any other person desires
14 to transfer the transaction of the business of the guardianship
15 from one county to another, the person shall file a written
16 application in the court in which the guardianship is pending
17 stating the reason for the transfer.

18 (b) With notice as provided by Section [1023.004](#), the court
19 in which a guardianship is pending, on the court's own motion, may
20 transfer the transaction of the business of the guardianship to
21 another county if the ward resides in the county to which the
22 guardianship is to be transferred.

23 (d) Section [1023.004](#), Estates Code, is amended to read as
24 follows:

25 Sec. 1023.004. NOTICE. (a) On filing an application or on
26 motion of a court to transfer a guardianship to another county under
27 Section [1023.003](#), the sureties on the bond of the guardian shall be

1 cited by personal service to appear and show cause why the
2 guardianship [application] should not be transferred [granted].

3 (b) If an application is filed by a person other than the
4 guardian or if a court made a motion to transfer a guardianship, the
5 guardian shall be cited by personal service to appear and show cause
6 why the guardianship [application] should not be transferred
7 ~~[granted]~~.

8 (e) Section 1023.005, Estates Code, is amended to read as
9 follows:

10 Sec. 1023.005. COURT ACTION. On hearing an application or
11 motion under Section 1023.003, if good cause is not shown to deny
12 the transfer [application] and it appears that transfer of the
13 guardianship is in the best interests of the ward, the court shall
14 enter an order:

15 (1) authorizing the transfer on payment on behalf of
16 the estate of all accrued costs; and

17 (2) requiring that any existing bond of the guardian
18 must remain in effect until a new bond has been given or a rider has
19 been filed in accordance with Section 1023.010.

20 (f) Section 1203.052, Estates Code, is amended by amending
21 Subsection (a) and adding Subsection (a-1) to read as follows:

22 (a) The court may remove a guardian as provided by
23 Subsection (a-1) [on the court's own motion, or on the complaint of
24 an interested person, after the guardian has been cited by personal
25 service to answer at a time and place set in the notice,] if:

26 (1) sufficient grounds appear to support a belief that
27 the guardian has misapplied, embezzled, or removed from the state,

1 or is about to misapply, embezzle, or remove from the state, any of
2 the property entrusted to the guardian's care;

3 (2) the guardian fails to return any account or report
4 that is required by law to be made;

5 (3) the guardian fails to obey a proper order of the
6 court that has jurisdiction with respect to the performance of the
7 guardian's duties;

8 (4) the guardian is proved to have been guilty of gross
9 misconduct or mismanagement in the performance of the guardian's
10 duties;

11 (5) the guardian:

12 (A) becomes incapacitated;

13 (B) is sentenced to the penitentiary; or

14 (C) from any other cause, becomes incapable of
15 properly performing the duties of the guardian's trust;

16 (6) the guardian has engaged in conduct with respect
17 to the ward that would be considered to be abuse, neglect, or
18 exploitation, as those terms are defined by Section [48.002](#), Human
19 Resources Code, if engaged in with respect to an elderly or disabled
20 person, as defined by that section;

21 (7) the guardian neglects to educate or maintain the
22 ward as liberally as the means of the ward's estate and the ward's
23 ability or condition permit;

24 (8) the guardian interferes with the ward's progress
25 or participation in programs in the community;

26 (9) the guardian fails to comply with the requirements
27 of Subchapter G, Chapter [1104](#);

1 (10) the court determines that, because of the
2 dissolution of the joint guardians' marriage, the termination of
3 the guardians' joint appointment and the continuation of only one
4 of the joint guardians as the sole guardian is in the best interest
5 of the ward; or

6 (11) the guardian would be ineligible for appointment
7 as a guardian under Subchapter H, Chapter 1104.

8 (a-1) The court may remove a guardian for a reason listed in
9 Subsection (a) on the:

10 (1) court's own motion, after the guardian has been
11 notified, by certified mail, return receipt requested, to answer at
12 a time and place set in the notice; or

13 (2) complaint of an interested person, after the
14 guardian has been cited by personal service to answer at a time and
15 place set in the notice.

16 (g) Sections 361.052 and 404.0035, Estates Code, as amended
17 by this section, apply to the estate of a decedent who dies before,
18 on, or after the effective date of this Act.

19 (h) Sections 1023.003, 1023.004, 1023.005, and 1203.052,
20 Estates Code, as amended by this section, apply to a guardianship
21 created before, on, or after the effective date of this Act.

22 SECTION 2. Section 751.052, Estates Code, is amended to
23 read as follows:

24 Sec. 751.052. RELATION OF ATTORNEY IN FACT OR AGENT TO
25 COURT-APPOINTED GUARDIAN OF ESTATE. (a) If, after execution of a
26 durable power of attorney, a court [~~of the principal's domicile~~]
27 appoints a:

1 (1) permanent guardian of the estate for a ward who is
2 ~~[of]~~ the principal who executed the power of attorney, on the
3 qualification of the guardian the powers and authority granted to
4 ~~[of]~~ the attorney in fact or agent named in the power of attorney
5 are automatically revoked; or

6 (2) temporary guardian of the estate for a ward who is
7 the principal who executed the power of attorney, on the
8 qualification of the guardian the powers and authority granted to
9 the attorney in fact or agent named in the power of attorney are
10 automatically suspended for the duration of the guardianship unless
11 the court enters an order that:

12 (A) affirms and states the effectiveness of the
13 power of attorney; and

14 (B) confirms the validity of the appointment of
15 the named attorney in fact or agent ~~[terminate on the qualification~~
16 ~~of the guardian of the estate].~~

17 (b) If the powers and authority of an [The] attorney in fact
18 or agent are revoked as provided by Subsection (a), the attorney in
19 fact or agent shall:

20 (1) deliver to the guardian of the estate all assets of
21 the ward's estate that are in the possession of the attorney in fact
22 or agent; and

23 (2) account to the guardian of the estate as the
24 attorney in fact or agent would account to the principal if the
25 principal had terminated the powers of the attorney in fact or
26 agent.

27 ~~[(b) If, after execution of a durable power of attorney, a~~

1 ~~court of the principal's domicile appoints a temporary guardian of~~
2 ~~the estate of the principal, the court may suspend the powers of the~~
3 ~~attorney in fact or agent on the qualification of the temporary~~
4 ~~guardian of the estate until the date the term of the temporary~~
5 ~~guardian expires. This subsection may not be construed to prohibit~~
6 ~~the application for or issuance of a temporary restraining order~~
7 ~~under applicable law.]~~

8 SECTION 3. Section 751.054(a), Estates Code, is amended to
9 read as follows:

10 (a) The revocation by, the death of, or the qualification of
11 a temporary or permanent guardian of the estate of a principal who
12 has executed a durable power of attorney or the removal of an
13 attorney in fact or agent under Chapter 753 does not revoke,
14 suspend, or terminate the agency as to the attorney in fact, agent,
15 or other person who acts in good faith under or in reliance on the
16 power without actual knowledge of the termination or suspension, as
17 applicable, of the power by:

- 18 (1) the revocation;
- 19 (2) the principal's death; ~~or~~
- 20 (3) the qualification of a temporary or permanent
21 guardian of the estate of the principal; or
- 22 (4) the attorney in fact's or agent's removal.

23 SECTION 4. Section 751.055(a), Estates Code, is amended to
24 read as follows:

25 (a) As to an act undertaken in good-faith reliance on a
26 durable power of attorney, an affidavit executed by the attorney in
27 fact or agent under the durable power of attorney stating that the

1 attorney in fact or agent did not have, at the time the power was
2 exercised, actual knowledge of the termination or suspension of the
3 power, as applicable, by revocation, the principal's death, the
4 principal's divorce or the annulment of the principal's marriage if
5 the attorney in fact or agent was the principal's spouse, [~~or~~] the
6 qualification of a temporary or permanent guardian of the estate of
7 the principal, or the attorney in fact's or agent's removal, is
8 conclusive proof as between the attorney in fact or agent and a
9 person other than the principal or the principal's personal
10 representative dealing with the attorney in fact or agent of the
11 nonrevocation, nonsuspension, or nontermination of the power at
12 that time.

13 SECTION 5. Section 752.051, Estates Code, is amended to
14 read as follows:

15 Sec. 752.051. FORM. The following form is known as a
16 "statutory durable power of attorney":

17 STATUTORY DURABLE POWER OF ATTORNEY
18 NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING.
19 THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P,
20 TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE
21 POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT
22 AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS
23 FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO
24 DO SO.

25 You should select someone you trust to serve as your agent
26 (attorney in fact). Unless you specify otherwise, generally the
27 agent's (attorney in fact's) authority will continue until:

- 1 (1) you die or revoke the power of attorney;
- 2 (2) your agent (attorney in fact) resigns, is removed
- 3 by court order, or is unable to act for you; or
- 4 (3) a guardian is appointed for your estate.

5 I, _____ (insert your name and address), appoint
6 _____ (insert the name and address of the person appointed) as
7 my agent (attorney in fact) to act for me in any lawful way with
8 respect to all of the following powers that I have initialed below.

9 TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN
10 FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS
11 LISTED IN (A) THROUGH (M).

12 TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE
13 POWER YOU ARE GRANTING.

14 TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE
15 POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

- 16 ___ (A) Real property transactions;
- 17 ___ (B) Tangible personal property transactions;
- 18 ___ (C) Stock and bond transactions;
- 19 ___ (D) Commodity and option transactions;
- 20 ___ (E) Banking and other financial institution
- 21 transactions;
- 22 ___ (F) Business operating transactions;
- 23 ___ (G) Insurance and annuity transactions;
- 24 ___ (H) Estate, trust, and other beneficiary transactions;
- 25 ___ (I) Claims and litigation;
- 26 ___ (J) Personal and family maintenance;
- 27 ___ (K) Benefits from social security, Medicare, Medicaid,

1 or other governmental programs or civil or military service;

2 _____ (L) Retirement plan transactions;

3 _____ (M) Tax matters;

4 _____ (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO
5 NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU
6 INITIAL LINE (N).

7 SPECIAL INSTRUCTIONS:

8 Special instructions applicable to gifts (initial in front of
9 the following sentence to have it apply):

10 _____ I grant my agent (attorney in fact) the power to apply my
11 property to make gifts outright to or for the benefit of a person,
12 including by the exercise of a presently exercisable general power
13 of appointment held by me, except that the amount of a gift to an
14 individual may not exceed the amount of annual exclusions allowed
15 from the federal gift tax for the calendar year of the gift.

16 ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS
17 LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____

27 UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS

1 EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

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

4 (A) This power of attorney is not affected by my subsequent
5 disability or incapacity.

6 (B) This power of attorney becomes effective upon my
7 disability or incapacity.

8 YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY
9 IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

10 IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT
11 YOU CHOSE ALTERNATIVE (A).

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

25 I agree that any third party who receives a copy of this
26 document may act under it. Revocation of the durable power of
27 attorney is not effective as to a third party until the third party

1 receives actual notice of the revocation. I agree to indemnify the
2 third party for any claims that arise against the third party
3 because of reliance on this power of attorney.

4 If any agent named by me dies, becomes legally disabled,
5 resigns, [~~or~~] refuses to act, or is removed by court order, I name
6 the following (each to act alone and successively, in the order
7 named) as successor(s) to that agent: _____.

8 Signed this _____ day of _____, _____
9 _____

10 (your signature)

11 State of _____

12 County of _____

13 This document was acknowledged before me on _____ (date) by
14 _____

15 (name of principal)

16 _____
17 (signature of notarial officer)

18 (Seal, if any, of notary) _____
19 (printed name)

20 My commission expires: _____

21 IMPORTANT INFORMATION FOR AGENT (ATTORNEY IN FACT)

22 Agent's Duties

23 When you accept the authority granted under this power of
24 attorney, you establish a "fiduciary" relationship with the
25 principal. This is a special legal relationship that imposes on you
26 legal duties that continue until you resign or the power of attorney
27 is terminated, suspended, or revoked by the principal or by

1 operation of law. A fiduciary duty generally includes the duty to:

2 (1) act in good faith;

3 (2) do nothing beyond the authority granted in this
4 power of attorney;

5 (3) act loyally for the principal's benefit;

6 (4) avoid conflicts that would impair your ability to
7 act in the principal's best interest; and

8 (5) disclose your identity as an agent or attorney in
9 fact when you act for the principal by writing or printing the name
10 of the principal and signing your own name as "agent" or "attorney
11 in fact" in the following manner:

12 (Principal's Name) by (Your Signature) as Agent (or as
13 Attorney in Fact)

14 In addition, the Durable Power of Attorney Act (Subtitle P,
15 Title 2, Estates Code) requires you to:

16 (1) maintain records of each action taken or decision
17 made on behalf of the principal;

18 (2) maintain all records until delivered to the
19 principal, released by the principal, or discharged by a court; and

20 (3) if requested by the principal, provide an
21 accounting to the principal that, unless otherwise directed by the
22 principal or otherwise provided in the Special Instructions, must
23 include:

24 (A) the property belonging to the principal that
25 has come to your knowledge or into your possession;

26 (B) each action taken or decision made by you as
27 agent or attorney in fact;

1 (C) a complete account of receipts,
2 disbursements, and other actions of you as agent or attorney in fact
3 that includes the source and nature of each receipt, disbursement,
4 or action, with receipts of principal and income shown separately;

5 (D) a listing of all property over which you have
6 exercised control that includes an adequate description of each
7 asset and the asset's current value, if known to you;

8 (E) the cash balance on hand and the name and
9 location of the depository at which the cash balance is kept;

10 (F) each known liability;

11 (G) any other information and facts known to you
12 as necessary for a full and definite understanding of the exact
13 condition of the property belonging to the principal; and

14 (H) all documentation regarding the principal's
15 property.

16 Termination of Agent's Authority

17 You must stop acting on behalf of the principal if you learn
18 of any event that terminates or suspends this power of attorney or
19 your authority under this power of attorney. An event that
20 terminates this power of attorney or your authority to act under
21 this power of attorney includes:

22 (1) the principal's death;

23 (2) the principal's revocation of this power of
24 attorney or your authority;

25 (3) the occurrence of a termination event stated in
26 this power of attorney;

27 (4) if you are married to the principal, the

1 dissolution of your marriage by court decree of divorce or
2 annulment;

3 (5) the appointment and qualification of a permanent
4 guardian of the principal's estate unless a court order provides
5 otherwise; or

6 (6) if ordered by a court, your removal as agent
7 (attorney in fact) under this power of attorney. An event that
8 suspends this power of attorney or your authority to act under this
9 power of attorney is the appointment and qualification of a
10 temporary guardian unless a court order provides otherwise [~~if~~
11 ~~ordered by a court, the suspension of this power of attorney on the~~
12 ~~appointment and qualification of a temporary guardian until the~~
13 ~~date the term of the temporary guardian expires].~~

14 Liability of Agent

15 The authority granted to you under this power of attorney is
16 specified in the Durable Power of Attorney Act (Subtitle P, Title 2,
17 Estates Code). If you violate the Durable Power of Attorney Act or
18 act beyond the authority granted, you may be liable for any damages
19 caused by the violation or subject to prosecution for
20 misapplication of property by a fiduciary under Chapter 32 of the
21 Texas Penal Code.

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

25 SECTION 6. Subtitle P, Title 2, Estates Code, is amended by
26 adding Chapter 753 to read as follows:

1 CHAPTER 753. REMOVAL OF ATTORNEY IN FACT OR AGENT

2 Sec. 753.001. PROCEDURE FOR REMOVAL. (a) In this section,
3 "person interested," notwithstanding Section 22.018, has the
4 meaning assigned by Section 1002.018.

5 (b) The following persons may file a petition under this
6 section:

7 (1) any person named as a successor attorney in fact or
8 agent in a durable power of attorney; or

9 (2) if the person with respect to whom a guardianship
10 proceeding has been commenced is a principal who has executed a
11 durable power of attorney, any person interested in the
12 guardianship proceeding, including an attorney ad litem or guardian
13 ad litem.

14 (c) On the petition of a person described by Subsection (b),
15 a probate court, after a hearing, may enter an order:

16 (1) removing a person named and serving as an attorney
17 in fact or agent under a durable power of attorney;

18 (2) authorizing the appointment of a successor
19 attorney in fact or agent who is named in the durable power of
20 attorney if the court finds that the successor attorney in fact or
21 agent is willing to accept the authority granted under the power of
22 attorney; and

23 (3) if compensation is allowed by the terms of the
24 durable power of attorney, denying all or part of the removed
25 attorney in fact's or agent's compensation.

26 (d) A court may enter an order under Subsection (c) if the
27 court finds:

1 (1) that the attorney in fact or agent has breached the
2 attorney in fact's or agent's fiduciary duties to the principal;

3 (2) that the attorney in fact or agent has materially
4 violated or attempted to violate the terms of the durable power of
5 attorney and the violation or attempted violation results in a
6 material financial loss to the principal;

7 (3) that the attorney in fact or agent is
8 incapacitated or is otherwise incapable of properly performing the
9 attorney in fact's or agent's duties; or

10 (4) that the attorney in fact or agent has failed to
11 make an accounting:

12 (A) that is required by Section 751.104 within
13 the period prescribed by Section 751.105, by other law, or by the
14 terms of the durable power of attorney; or

15 (B) as ordered by the court.

16 Sec. 753.002. NOTICE TO THIRD PARTIES. Not later than the
17 21st day after the date the court enters an order removing an
18 attorney in fact or agent and authorizing the appointment of a
19 successor under Section 753.001, the successor attorney in fact or
20 agent shall provide actual notice of the order to each third party
21 that the attorney in fact or agent has reason to believe relied on
22 or may rely on the durable power of attorney.

23 SECTION 7. Section 1055.003, Estates Code, is amended by
24 amending Subsection (a) and adding Subsection (d) to read as
25 follows:

26 (a) Notwithstanding the Texas Rules of Civil Procedure and
27 except as provided by Subsection (d), an interested person may

1 intervene in a guardianship proceeding only by filing a timely
2 motion to intervene that is served on the parties.

3 (d) A person who is entitled to receive notice under Section
4 1051.104 is not required to file a motion under this section to
5 intervene in a guardianship proceeding.

6 SECTION 8. Section 1101.002, Estates Code, is amended to
7 read as follows:

8 Sec. 1101.002. CONTENTS OF APPLICATION; CONFIDENTIALITY OF
9 CERTAIN ADDRESSES. An application filed under Section 1101.001 may
10 omit the address of a person named in the application if:

11 (1) the application states that the person is or was
12 protected by a protective order issued under Chapter 85, Family
13 Code;

14 (2) a copy of the protective order is attached to the
15 application as an exhibit;

16 (3) the application states the county in which the
17 person resides;

18 (4) the application indicates the place where notice
19 to or the issuance and service of citation on the person may be made
20 or sent; and

21 (5) the application is accompanied by a request for an
22 order under Section 1051.201 specifying the manner of issuance,
23 service, and return of citation or notice on the person.

24 SECTION 9. Section 1151.051(d), Estates Code, is amended to
25 read as follows:

26 (d) Notwithstanding Subsection (c)(4), a guardian of the
27 person of a ward has the power to personally transport the ward or

1 to direct the ward's transport by emergency medical services or
2 other means to an inpatient mental health facility for a
3 preliminary examination in accordance with Subchapters A and C,
4 Chapter 573, Health and Safety Code. The guardian shall
5 immediately provide written notice to the court that granted the
6 guardianship as required by Section 573.004, Health and Safety
7 Code, of the filing of an application under that section.

8 SECTION 10. Section 1357.052, Estates Code, is amended to
9 read as follows:

10 Sec. 1357.052. AUTHORITY OF SUPPORTER; NATURE OF
11 RELATIONSHIP. (a) A supporter may exercise the authority granted
12 to the supporter in the supported decision-making agreement.

13 (b) The supporter owes to the adult with a disability
14 fiduciary duties as listed in the form provided by Section
15 1357.056(a), regardless of whether that form is used for the
16 supported decision-making agreement.

17 (c) The relationship between an adult with a disability and
18 the supporter with whom the adult enters into a supported
19 decision-making agreement:

20 (1) is one of trust and confidence; and

21 (2) does not undermine the decision-making authority
22 of the adult.

23 SECTION 11. Subchapter B, Chapter 1357, Estates Code, is
24 amended by adding Section 1357.0525 to read as follows:

25 Sec. 1357.0525. DESIGNATION OF ALTERNATE SUPPORTER IN
26 CERTAIN CIRCUMSTANCES. In order to prevent a conflict of interest,
27 if a determination is made by an adult with a disability that the

1 supporter with whom the adult entered into a supported
2 decision-making agreement is the most appropriate person to provide
3 to the adult supports and services for which the supporter will be
4 compensated, the adult may amend the supported decision-making
5 agreement to designate an alternate person to act as the adult's
6 supporter for the limited purpose of participating in
7 person-centered planning as it relates to the provision of those
8 supports and services.

9 SECTION 12. Section 1357.053(b), Estates Code, is amended
10 to read as follows:

11 (b) The supported decision-making agreement is terminated
12 if:

13 (1) the Department of Family and Protective Services
14 finds that the adult with a disability has been abused, neglected,
15 or exploited by the supporter; ~~or~~

16 (2) the supporter is found criminally liable for
17 conduct described by Subdivision (1); or

18 (3) a temporary or permanent guardian of the person or
19 estate appointed for the adult with a disability qualifies.

20 SECTION 13. Section 1357.056(a), Estates Code, is amended
21 to read as follows:

22 (a) Subject to Subsection (b), a supported decision-making
23 agreement is valid only if it is in substantially the following
24 form:

25 SUPPORTED DECISION-MAKING AGREEMENT

26 Important Information For Supporter: Duties

27 When you agree to provide support to an adult with a

1 disability under this supported decision-making agreement, you
2 have a duty to:

3 (1) act in good faith;

4 (2) act within the authority granted in this
5 agreement;

6 (3) act loyally and without self-interest; and

7 (4) avoid conflicts of interest.

8 Appointment of Supporter

9 I, (insert your name), make this agreement of my own free
10 will.

11 I agree and designate that: _____

12 Name: _____

13 Address: _____

14 Phone Number: _____

15 E-mail Address: _____

16 is my supporter. My supporter may help me with making everyday life
17 decisions relating to the following:

18 Y/N obtaining food, clothing, and shelter

19 Y/N taking care of my physical health

20 Y/N managing my financial affairs.

21 My supporter is not allowed to make decisions for me. To help
22 me with my decisions, my supporter may:

23 1. Help me access, collect, or obtain information that is
24 relevant to a decision, including medical, psychological,
25 financial, educational, or treatment records;

26 2. Help me understand my options so I can make an informed
27 decision; or

1 3. Help me communicate my decision to appropriate persons.
2 Y/N A release allowing my supporter to see protected
3 health information under the Health Insurance Portability and
4 Accountability Act of 1996 (Pub. L. No. 104-191) is attached.

5 Y/N A release allowing my supporter to see educational
6 records under the Family Educational Rights and Privacy Act of 1974
7 (20 U.S.C. Section 1232g) is attached.

8 Effective Date of Supported Decision-Making Agreement

9 This supported decision-making agreement is effective
10 immediately and will continue until (insert date) or until the
11 agreement is terminated by my supporter or me or by operation of
12 law.

13 Signed this _____ day of _____, 20____

14 Consent of Supporter

15 I, (name of supporter), consent to act as a supporter under
16 this agreement.

17 _____

18 (signature of supporter) (printed name of supporter)

19 Signature

20 _____

21 (my signature) (my printed name)

22 _____

23 (witness 1 signature) (printed name of witness 1)

24 _____

25 (witness 2 signature) (printed name of witness 2)

26 State of _____

27 County of _____

1 This document was acknowledged before me
2 on _____ (date)
3 by _____ and _____
4 (name of adult with a disability) (name of supporter)
5 _____
6 (signature of notarial officer)
7 (Seal, if any, of notary) _____
8 (printed name)
9 My commission expires: _____

10 WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

11 IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE
12 OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE
13 ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY
14 THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT,
15 OR EXPLOITATION TO THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
16 BY CALLING THE ABUSE HOTLINE AT 1-800-252-5400 OR ONLINE AT
17 WWW.TXABUSEHOTLINE.ORG.

18 SECTION 14. (a) Sections 751.052, 751.054(a), and
19 751.055(a), Estates Code, as amended by this Act, and Chapter 753,
20 Estates Code, as added by this Act, apply to a durable power of
21 attorney, including a statutory durable power of attorney, executed
22 before, on, or after the effective date of this Act.

23 (b) Section 752.051, Estates Code, as amended by this Act,
24 applies to a statutory durable power of attorney executed on or
25 after the effective date of this Act. A statutory durable power of
26 attorney executed before the effective date of this Act is governed
27 by the law as it existed on the date the statutory durable power of

1 attorney was executed, and the former law is continued in effect for
2 that purpose.

3 (c) Section 1055.003, Estates Code, as amended by this Act,
4 applies to a guardianship proceeding that is pending or commenced
5 on or after the effective date of this Act.

6 (d) Section 1101.002, Estates Code, as amended by this Act,
7 applies to an application for a guardianship filed on or after the
8 effective date of this Act.

9 (e) Sections 1357.052 and 1357.053(b), Estates Code, as
10 amended by this Act, and Section 1357.0525, Estates Code, as added
11 by this Act, apply to a supported decision-making agreement entered
12 into before, on, or after the effective date of this Act.

13 (f) Section 1357.056(a), Estates Code, as amended by this
14 Act, applies to a supported decision-making agreement entered into
15 on or after the effective date of this Act. A supported
16 decision-making agreement entered into before the effective date of
17 this Act is governed by the law as it existed on the date the
18 supported decision-making agreement was entered into, and the
19 former law is continued in effect for that purpose.

20 SECTION 15. This Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 39 passed the Senate on April 5, 2017, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendment on May 25, 2017, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 39 passed the House, with amendment, on May 22, 2017, by the following vote: Yeas 144, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor