

# A Trustee's Road Map to Court Created Trusts

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## TRUSTEE'S ROAD MAP TO COURT CREATED TRUSTS



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<u>Section 1301 Trust</u>	<u>Section 142</u>
Least restrictive alternative	No guardian
Family Dynamics	Family Dynamics/Asset protection
Guardian unable to post bond	Guardian unable to post bond
Minor	Minor
Preservation of benefits	Preservation of benefits
Complicated or sizeable assets	Large settlement

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Romulus: What should we name this great city?

Remus: Reme.

Romulus: \*sharpening spear\*  
I have a better idea.



**142 Definition:**

“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.”

**1301 Definition:**

“a minor, an adult because of physical or mental condition, is *substantially* unable to: provide food, clothing, or shelter for himself or herself; or care for the person’s own physical health; or manage the person’s own financial affairs; or a person who must have a guardian appointed for the person to receive funds due the person from a governmental source.”

## WHO CAN APPLY?



### 142 Trusts:

1. Next Friend
2. Guardian Ad Litem
3. Attorney Ad Litem (possibly)
4. Not a guardian\*



### 1301 Trusts:

1. Guardian of a Ward
2. An attorney ad litem or guardian ad litem for ward
3. A person interested in the welfare of an alleged incapacitated\*
4. Attorney Ad Litem/Guardian Ad Litem\*
5. A person who only has a physical disability

## WHO CAN BE TRUSTEE?



<u>Section 1301 Trust</u>	<u>Section 142</u>
Financial Institution TEX. FIN. CODE ANN. § 201.101	Financial Institution TEX. FIN. CODE ANN. § 201.101
Individual if less than \$150,000	Individual is less than \$50,000
Individual if no financial institution is willing to serve or beneficiary is one with only a physical disability	Individual if no financial institution is willing to serve



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19<sup>th</sup> Annual Changes and Trends Affecting Special Needs Trusts session  
"Texas Guardianship (1301 & 1302) and Trial Court-Created (142) Trusts"