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Advising New to Texas Clients About Transferring Guardianship from Another State

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Advising “New-to-Texas” Clients When Transferring Guardianship to Texas from Another State

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Texas’s guardianship law, including the requirements for transferring guardianship to and from the Great State, is found in the Texas Estates Code. The majority of other states . . . but not Texas . . . have adopted the Uniform Adult Guardianship and Protection Proceedings Jurisdiction Act (UAGPPJA). The UAGPPJA, aside from being a mouthful, was supposed to make it easier to move guardianships between the states that have adopted the Uniform Act. Whether that purpose was accomplished is still being debated in those states. And, like Texas, a few other outlier states still have their own guardianship statutes for transfer procedures and guardianship requirements.

For “new-to-Texas” clients there will be differences between Texas guardianship law and the law of the state where the guardianship originated. One simple, but sometimes confusing difference between many states is the terminology used to identify the type of guardian appointed. This might be a good starting point for explaining the differences the client will face when moving to Texas.

In Texas, the “guardian of the person” is the person or entity who is appointed by a court to make personal decisions for the Ward. *See* Tex. Estates Code Sec. 1151.004. The “guardian of the estate” is the person or entity who is appointed to hold and manage the assets of the Ward. *See* Tex. Estates Code Sec. 1151.101. However, other states refer to the two guardianship roles as “conservator of the person” and “conservator of the estate” or “guardian of the person” and “conservator of the estate.” Translating the guardianship roles can be complicated when moving guardianship to Texas from another state.

1. The Process for Transferring a Guardianship to Texas

In general terms, the usual process for transferring a guardianship from another state (“foreign guardianship”) to Texas requires several steps and attorneys in both states.

First, the guardian must request permission from the state that originally granted the guardianship to transfer the guardianship to Texas. This request usually includes the preparation and approval of a final accounting in the originating state.

The guardian will also file an application in the court in the Texas county where the Ward resides or intends to relocate for the receipt and acceptance of the foreign guardianship. *See* Tex. Estates Code Sec. 1253.051. A certified copy of all of the documents filed in the foreign guardianship must be attached to the Texas application, including the approved Final Account. Additionally, the guardian must complete a background check and Texas guardianship training with the Judicial Branch Certification Commission (“JBCC”). *See* Tex. Estates Code Sec. 1253.0515.

Practice Note: Section 1253.051 of the Texas Estates Code states that the Application for Receipt and Acceptance of a Foreign Guardianship “must have attached a certified copy of all papers of the guardianship filed and recorded in the foreign court.” However, other states do not necessarily comply with Texas’ requirements to make available a certified copy of the guardianship court file, even for a fee. A California court recently refused to allow a guardian to purchase a certified copy of the guardianship record in its entirety. Instead, the court permitted the guardian to purchase selected documents in the file which could be separately certified for a more exaggerated cost than the typical purchase of a file as one certified document. The fee for obtaining a copy of the guardianship file in this situation nearly doubled the cost of the legal fee for transferring the guardianship.

After receiving the application for receipt and acceptance of the foreign guardianship, the Texas court will hold a hearing to consider the acceptance of the guardianship and possible modification of guardianship requirements to comply with Texas law. *See* Tex. Estates Code Sec. 1253.053(a)(1)-(2). A simple example of a modification of the guardianship to comply with Texas law is where the Texas court changes the foreign court’s terminology from “conservator” to “guardian.”

Texas courts are required to give full faith and credit to the foreign guardianship court order concerning the determination of the ward’s incapacity and the powers of the guardian. *See* Tex. Estates Code Sec. 1253.053(d). As a result, the process for determining the incapacity of Ward or the suitability of the guardian can be avoided when transferring a guardianship to Texas. Another example of the full faith and credit rule in action is when Texas courts permit co-guardians who were appointed in another state to continue to serve as co-guardians in Texas. Under Texas law, unless the co-guardians are parents, only one person is permitted to be guardian of the person or estate (or one person may be appointed guardian of the person and another person appointed guardian of the estate). *See* Tex. Estates Code Sec. 1104.001.

If the Texas court accepts the transfer of the foreign guardianship, the guardian will return to the court in the originating state to ask for final authorization to move the guardianship to Texas. The Texas court will then coordinate efforts with the originating state court to orderly transfer the guardianship case to Texas. *See* Tex. Estates Code Sec. 1253.053(e).

If the Texas court denies the application to transfer the foreign guardianship, the guardian has the option of starting from scratch and filing an entirely new application for guardianship in Texas under Section 1101.001 of the Texas Estates Code. This process would include considering alternatives to guardianship, whether guardianship is necessary, and appointing an appropriate person or entity to be the guardian. If the Texas court approves the new guardianship application, the guardian can then request termination of the guardianship in the original state.

It is important to advise the “new-to-Texas” client that having moved from the originating state does not alleviate the guardian’s obligation to that state unless and until the guardianship in the originating state is terminated. The guardian cannot simply move a Ward to Texas, and disregard the foreign state’s requirements to continue paying the bond, file reports and accountings,

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