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**When all else fails...avoiding the dreaded certified mail return  
receipt requested! What exactly does a qualified delivery  
method mean for probate and guardianship?**

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**When all else fails...avoiding the dreaded registered or certified mail return receipt requested! What exactly does a qualified delivery method mean for probate and guardianship?**

Permissible forms of service for probate and guardianship cases has evolved over time, but albeit slowly. The rules governing permissible methods for serving notice in such cases are primarily outlined in the Texas Estates Code.<sup>1</sup> Texas history and case law surrounding permissible delivery methods in Texas reflect a combination of legislative developments, judicial interpretation, and practical considerations. In the context of estate law, qualified delivery methods refer to the acceptable means by which certain notices shall be delivered to necessary and proper parties, creditors and other required participants.

Until recently the Texas Estates Code's primary method of service, other than personal service, for most notices, pleadings, and other legal documents required that they be forwarded to the party via registered or certified mail return receipt requested using the United States Postal Service. Registered mail is typically used by the average consumer to forward mail or packages that provide a higher level of security through the delivery process. This services includes a verifiable chain of custody by the United States Postal Service employees, and includes insurance. Additionally, registered mail is significantly more expensive (four times the cost in most instances) in comparison to certified mail. Certified mail is handled like regular mail and does not include insurance and is the less expensive option for proof of mailing and proof of delivery. Thus, although registered mail was previously included as an option for most methods of delivery in the Estates Code it was not commonly used. Instead, most legal practitioners relied upon the use of certified mail return receipt requested for delivery of notices requiring proof of delivery, as opposed to registered mail.

In recent years, certified mail through the United States Postal Service has become less and less dependable. Even so, up until recently the Texas Estates Code was full of requirements that most notices for probate and guardianship matters, other than those required to be delivered via personal citation, lacked any other reasonable alternatives and had not advanced with society's commonly used forms of communication and technology. More often than not, the return receipt

proof of service for certified mail is missing or incomplete. For instance many return receipts are blank, missing the date of service, missing the signature of the intended party, or signed by someone other than the addressee. Following the quarantine period associated with 2020's COVID 19 outbreak this practitioner received several return receipts marked "COVID 19" where absolutely no attempt was made to obtain a signature resulting in significant delays in returning proof of valid service to the Court. The increasing lack of reliability for appropriately documented return of service has become a systemic problem for the legal community at large. The Texas Civil Practices and Remedies Code and the Texas Rules of Civil Procedure have already been updated to respond to the difficulties in providing documented return of service through the United States Postal Service.

Texas Senate Bill 1373 ("SB 1373") and Texas Senate Bill 1457 ("SB 1457") have amended numerous sections of the Texas Estates Code which formerly required delivery, citations, and notices to be forwarded by registered or certified mail and instead now require delivery by a qualified delivery method. See attached Appendix A listing all sections of the Texas Estates Code that were amended to reflect qualified delivery method in lieu of registered or certified mail (return receipt requested).

### **QUALIFIED DELIVERY METHOD IN THE TEXAS ESTATES CODE**

Qualified delivery methods include hand delivery by courier (with proof of delivery), or a private delivery service designated by the Secretary of the Treasury under IRC Section 7502(f)(2).<sup>ii</sup> Texas SB 1373 and Texas SB 1457 amended the Texas Estates Code effective September 1, 2023. Thus cases filed prior to the new notice methods must still be performed pursuant to the former notice statutes.

Texas SB 1373 amends the sections in the Texas Estates Code, relating to estates and probate proceedings, requiring delivery by certified mail, to allow for delivery by a qualified delivery method, which is defined as:

Sec. 22.0295 of the Texas Estates Code. **QUALIFIED DELIVERY METHOD.** "Qualified delivery method" means delivery by:

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## Title search: When All Else Fails...Avoiding the Dreaded Certified Mail Return Receipt Requested! What Exactly Does a Qualified Delivery Method Mean for Probate and Guardianship?

First appeared as part of the conference materials for the 26<sup>th</sup> Annual Estate Planning, Guardianship and Elder Law Conference session "When All Else Fails...Avoiding the Dreaded Certified Mail Return Receipt Requested! What Exactly Does a Qualified Delivery Method Mean for Probate and Guardianship?"