

A Trustee's Road Map to Court Created Trusts

Beth Hearn Owens, JD, LLM

betho@amnat.com

713.913.0972

February 9, 2023



**American National
Bank & Trust™**

1

TRUSTEE'S ROAD MAP TO COURT CREATED TRUSTS



**American National
Bank & Trust™**

<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

2

Romulus: What should we name this great city?

Remus: Reme.

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



3

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.”

4

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



Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: A Trustee's Road Map to Court Created Trusts

Also available as part of the eCourse

[2023 Special Needs Trusts eConference](#)

First appeared as part of the conference materials for the
19th Annual Changes and Trends Affecting Special Needs Trusts session
"Texas Guardianship (1301 & 1302) and Trial Court-Created (142) Trusts"