

# TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>II.</b>	<b>JURISDICTION .....</b>	<b>1</b>
	<b>A. General Jurisdiction .....</b>	<b>1</b>
	<b>B. Matters Appertaining to or Incident to an Estate.....</b>	<b>1</b>
	<b>C. Section 606(b) .....</b>	<b>1</b>
	<b>D. Transfers When Contest is Resolved.....</b>	<b>1</b>
	<b>E. Other Jurisdiction.....</b>	<b>1</b>
	<b>F. Section 607(e).....</b>	<b>2</b>
	<b>G. Transfer of Guardianship Proceedings.....</b>	<b>2</b>
	<b>H. Contested Guardianship of the Person of a Minor -Section 609 .....</b>	<b>2</b>
	<b>1. Transfer .....</b>	<b>2</b>
	<b>2. Files.....</b>	<b>2</b>
<b>III.</b>	<b>VENUE - SECTION 610 .....</b>	<b>2</b>
	<b>A. Incapacitated Adult .....</b>	<b>2</b>
	<b>B. Minor.....</b>	<b>3</b>
	<b>C. Transfer .....</b>	<b>3</b>
<b>IV.</b>	<b>APPOINTMENT OF GUARDIAN .....</b>	<b>3</b>
	<b>A. Guardian of Minors - Section 676 .....</b>	<b>3</b>
	<b>1. Parent .....</b>	<b>3</b>
	<b>2. Ascendants.....</b>	<b>3</b>
	<b>3. Designation .....</b>	<b>3</b>
	<b>4. Incapacity.....</b>	<b>3</b>
	<b>B. Guardians of Person Other Than Minors - Section 677.....</b>	<b>4</b>
	<b>1. Order of Appointment.....</b>	<b>4</b>
	<b>2. Surviving Parent .....</b>	<b>4</b>
	<b>3. Designation .....</b>	<b>4</b>
	<b>4. Incapacity.....</b>	<b>4</b>
	<b>C. Written Declarations by Certain Parents to Appoint Guardians for Their Children - Section 677A and 677B .....</b>	<b>4</b>
	<b>1. Form .....</b>	<b>4</b>
	<b>2. Declaration Requirements.....</b>	<b>4</b>
	<b>3. Competency .....</b>	<b>4</b>
	<b>4. Filing with Court.....</b>	<b>5</b>
	<b>5. Revocation of Designation.....</b>	<b>5</b>
	<b>D. Designation of Guardian Before Need Rises - Section 679 &amp; 679A .....</b>	<b>5</b>
	<b>1. Form .....</b>	<b>5</b>
	<b>2. Declaration Requirements.....</b>	<b>5</b>
	<b>3. Filing with Court.....</b>	<b>5</b>
	<b>4. Preference of Proposed Ward .....</b>	<b>5</b>
	<b>5. Revocation of Designation.....</b>	<b>5</b>
	<b>E. Selection of Guardian by Minor - Section 680 .....</b>	<b>6</b>

<b>V.</b>	<b>PROCEDURE FOR APPOINTMENT</b> .....	<b>6</b>
<b>A.</b>	<b>Application - Section 682</b> .....	<b>6</b>
<b>B.</b>	<b>Application for Appointment of Guardian for Certain Persons – Section 682A</b> .....	<b>7</b>
<b>C.</b>	<b>Court Initiation of Guardianship Proceedings - Section 683</b> .....	<b>8</b>
<b>1.</b>	<b>Court’s Duties</b> .....	<b>8</b>
<b>2.</b>	<b>Probable Cause</b> .....	<b>8</b>
<b>3.</b>	<b>Information Letter - Section 683A</b> .....	<b>8</b>
<b>D.</b>	<b>Examinations and Reports - Section 687</b> .....	<b>9</b>
<b>1.</b>	<b>Doctor’s Letter</b> .....	<b>9</b>
<b>2.</b>	<b>Mental Retardation</b> .....	<b>9</b>
<b>E.</b>	<b>Notice and Citation - Section 633</b> .....	<b>10</b>
<b>1.</b>	<b>Parties</b> .....	<b>10</b>
<b>2.</b>	<b>Personal Service</b> .....	<b>10</b>
<b>3.</b>	<b>Notice by Mail</b> .....	<b>10</b>
<b>4.</b>	<b>Filing with Court</b> .....	<b>11</b>
<b>5.</b>	<b>Waivers</b> .....	<b>11</b>
<b>6.</b>	<b>Timing for Hearing</b> .....	<b>11</b>
<b>7.</b>	<b>Applicants</b> .....	<b>11</b>
<b>8.</b>	<b>Cross-Application</b> .....	<b>11</b>
<b>F.</b>	<b>Service on Attorney - Section 634</b> .....	<b>11</b>
<b>VI.</b>	<b>STANDING IN GUARDIANSHIP PROCEEDINGS - SECTION 642</b> .....	<b>11</b>
<b>A.</b>	<b>Statutes</b> .....	<b>11</b>
<b>1.</b>	<b>Interested Person</b> .....	<b>11</b>
<b>2.</b>	<b>Exceptions</b> .....	<b>12</b>
<b>3.</b>	<b>Disqualification</b> .....	<b>12</b>
<b>B.</b>	<b>Adverse Interest</b> .....	<b>12</b>
<b>1.</b>	<b>Statute</b> .....	<b>12</b>
<b>2.</b>	<b>Examples of Adverse Interest</b> .....	<b>12</b>
<b>a.</b>	<b>A Person With Duty to Account</b> .....	<b>12</b>
<b>b.</b>	<b>Creditors</b> .....	<b>13</b>
<b>c.</b>	<b>Spouse</b> .....	<b>13</b>
<b>d.</b>	<b>Parent</b> .....	<b>13</b>
<b>3.</b>	<b>Actual Versus Potential Adverse Interest</b> .....	<b>13</b>
<b>a.</b>	<b>Potential Adverse Interest</b> .....	<b>13</b>
<b>b.</b>	<b>No Conflict</b> .....	<b>13</b>
<b>4.</b>	<b>Motion in Limine</b> .....	<b>13</b>
<b>a.</b>	<b>Challenge</b> .....	<b>13</b>
<b>b.</b>	<b>Discovery</b> .....	<b>13</b>
<b>c.</b>	<b>Summary Judgment</b> .....	<b>14</b>
<b>d.</b>	<b>Issue of Fact</b> .....	<b>14</b>
<b>e.</b>	<b>Appellate Issues</b> .....	<b>14</b>
<b>C.</b>	<b>Disqualification</b> .....	<b>14</b>
<b>1.</b>	<b>Statute</b> .....	<b>14</b>
<b>2.</b>	<b>Rules of Disqualification</b> .....	<b>14</b>

a.	A Minor .....	14
b.	Notoriously Bad Conduct .....	14
c.	Incapacitated Person .....	14
d.	Party to Lawsuit Involving Proposed Ward.....	14
e.	Person Indebted to Proposed Ward .....	15
f.	Person Asserting Claim Adverse .....	15
g.	Inexperienced or Incapable Person.....	15
h.	Non-Resident Without Resident Agent.....	15
i.	Unsuitable Person .....	15
j.	Disqualified by Declaration.....	15
D.	Presumption Concerning Best Interest .....	15
1.	Filing Contest .....	15
VII.	ALTERNATIVE GUARDIAN/TRUSTEE .....	15
A.	Appointment of Private Professional Guardian - Sections 696-698 .....	15
1.	Application .....	16
2.	Registration .....	16
3.	Certification.....	16
4.	Submission .....	16
5.	The Clerk's List of Certain PPGs.....	16
6.	Criminal History .....	17
a.	Records.....	17
b.	Employee.....	17
c.	Confidentiality.....	17
B.	Management Trusts - Section 867	
1.	Creation of Management Trust .....	17
a.	Who Can Apply?.....	17
b.	Venue - Section 867A .....	18
c.	Court Creation .....	18
d.	No Application for Guardianship Necessary.....	18
e.	A Financial Institution Shall Serve as Trustee.....	18
f.	Court Order to Turn Over Assets .....	18
2.	Terms of Management Trust - Section 868 .....	19
a.	Mandatory Provisions .....	19
b.	Discretionary Provisions .....	19
c.	Exculpatory clauses .....	19
d.	Discharge of Guardian of Estate and Continuation of Trust - Section 868A .....	20
e.	Amendment, Modification or Revocation - Sections 869 and 869A.....	20
f.	Applicability of Texas Trust Code - Section 869B.....	20
g.	Jurisdiction Over Trust Matters .....	20
h.	Termination of Trusts - Section 870.....	20
i.	Annual Accounting - Section 871 .....	20
j.	Liability - Section 872.....	21
k.	Distribution of Trust Property - Section 873.....	21

<b>VIII.</b>	<b>COURT APPOINTEES.....</b>	<b>21</b>
<b>A.</b>	<b>Appointment of Attorney Ad Litem - Section 646 .....</b>	<b>21</b>
1.	<b>Definition .....</b>	<b>21</b>
2.	<b>Certificate Requirement .....</b>	<b>21</b>
3.	<b>Guardianship Certification Board .....</b>	<b>21</b>
<b>B.</b>	<b>Duties of Attorney Ad Litem - Section 647 .....</b>	<b>22</b>
1.	<b>Meeting the Ward .....</b>	<b>22</b>
2.	<b>Review of Documents.....</b>	<b>22</b>
3.	<b>Interview of Witnesses.....</b>	<b>22</b>
4.	<b>Answer .....</b>	<b>22</b>
5.	<b>Issues to Consider for Trial.....</b>	<b>22</b>
<b>C.</b>	<b>Proposed Ward’s Right to Private Counsel.....</b>	<b>22</b>
1.	<b>Attorney Ad Litem .....</b>	<b>22</b>
2.	<b>Right to Retain Private Counsel .....</b>	<b>23</b>
3.	<b>Warning .....</b>	<b>23</b>
<b>D.</b>	<b>Challenging Attorney’s Standing to Represent Ward.....</b>	<b>23</b>
1.	<b>Person Interested.....</b>	<b>23</b>
2.	<b>Rule 12.....</b>	<b>23</b>
3.	<b>Hearing.....</b>	<b>23</b>
<b>E.</b>	<b>Guardian Ad Litem - Section 645.....</b>	<b>24</b>
1.	<b>Appointment.....</b>	<b>24</b>
a.	<b>Best Interest.....</b>	<b>24</b>
b.	<b>Lawsuit.....</b>	<b>24</b>
c.	<b>Judicial Economy .....</b>	<b>24</b>
2.	<b>Duties of Guardian Ad Litem .....</b>	<b>24</b>
3.	<b>Immunity - Section 645A.....</b>	<b>24</b>
<b>F.</b>	<b>Court Investigators - Section 648A .....</b>	<b>25</b>
1.	<b>Duties.....</b>	<b>25</b>
2.	<b>Disclosure.....</b>	<b>25</b>
<b>IX.</b>	<b>TEMPORARY GUARDIANSHIP .....</b>	<b>26</b>
<b>A.</b>	<b>Procedure.....</b>	<b>25</b>
1.	<b>Application .....</b>	<b>25</b>
2.	<b>Notice.....</b>	<b>25</b>
<b>B.</b>	<b>Retention of Rights .....</b>	<b>26</b>
<b>C.</b>	<b>Appointment.....</b>	<b>26</b>
1.	<b>Hearing.....</b>	<b>26</b>
2.	<b>Appointment.....</b>	<b>26</b>
3.	<b>Costs .....</b>	<b>26</b>
4.	<b>Qualification .....</b>	<b>26</b>
<b>D.</b>	<b>Dismissal or Contest .....</b>	<b>26</b>
<b>E.</b>	<b>Temporary Guardian Pending Contest .....</b>	<b>26</b>
<b>X.</b>	<b>DOCKET CONTROL AND DISCOVERY .....</b>	<b>27</b>
<b>A.</b>	<b>Docket Control Order.....</b>	<b>27</b>
<b>B.</b>	<b>Discovery.....</b>	<b>27</b>
<b>C.</b>	<b>Independent Mental Examination.....</b>	<b>28</b>

<b>XI.</b>	<b>EVIDENTIARY ISSUES .....</b>	<b>28</b>
<b>A.</b>	<b>Witnesses.....</b>	<b>28</b>
<b>1.</b>	<b>Prepare Proposed Ward for Hearing.....</b>	<b>28</b>
<b>2.</b>	<b>Potential Witnesses .....</b>	<b>28</b>
<b>B.</b>	<b>Experts .....</b>	<b>28</b>
<b>1.</b>	<b>Medical Experts .....</b>	<b>28</b>
<b>2.</b>	<b>Attorney’s Fee Experts .....</b>	<b>29</b>
<b>C.</b>	<b>Selecting Qualified Experts.....</b>	<b>30</b>
<b>1.</b>	<b>Qualifying an Expert .....</b>	<b>30</b>
<b>2.</b>	<b><i>Daubert, Robinson &amp; Carmichael, et al.</i>.....</b>	<b>31</b>
<b>D.</b>	<b>Privileges and Exceptions.....</b>	<b>32</b>
<b>1.</b>	<b>Physician/Patient Privilege.....</b>	<b>32</b>
<b>a.</b>	<b>Rule of Privilege .....</b>	<b>32</b>
<b>b.</b>	<b>Waiver of Privilege .....</b>	<b>33</b>
<b>2.</b>	<b>Confidentiality.....</b>	<b>33</b>
<b>a.</b>	<b>Rule of Privilege .....</b>	<b>33</b>
<b>b.</b>	<b>Waiver of Privilege .....</b>	<b>33</b>
<b>3.</b>	<b>Exceptions to Privilege .....</b>	<b>33</b>
<b>a.</b>	<b>Statute .....</b>	<b>33</b>
<b>b.</b>	<b>Medical Experts .....</b>	<b>33</b>
<b>c.</b>	<b>Argument .....</b>	<b>34</b>
<b>d.</b>	<b>Voir Dire .....</b>	<b>34</b>
<b>E.</b>	<b>Questions for the Expert on Incapacity .....</b>	<b>34</b>
<b>F.</b>	<b>Right to a Jury Trial.....</b>	<b>35</b>
<b>1.</b>	<b>Statutes.....</b>	<b>35</b>
<b>2.</b>	<b>Texas Constitution .....</b>	<b>35</b>
<b>3.</b>	<b>Waiver.....</b>	<b>35</b>
<b>4.</b>	<b>Timing.....</b>	<b>35</b>
<b>5.</b>	<b>Payment of Fee .....</b>	<b>36</b>
<b>G.</b>	<b>Whether to Request a Jury .....</b>	<b>36</b>
<b>1.</b>	<b>Applicant.....</b>	<b>36</b>
<b>2.</b>	<b>Proposed Ward.....</b>	<b>36</b>
<b>XII.</b>	<b>VOIR DIRE .....</b>	<b>36</b>
<b>XIII.</b>	<b>TRIAL.....</b>	<b>38</b>
<b>A.</b>	<b>Findings Required - Section 684.....</b>	<b>38</b>
<b>1.</b>	<b>Burden.....</b>	<b>39</b>
<b>2.</b>	<b>Proof.....</b>	<b>39</b>
<b>3.</b>	<b>Presence of Ward .....</b>	<b>39</b>
<b>4.</b>	<b>Court’s Duty .....</b>	<b>39</b>
<b>B.</b>	<b>Burden of Proof - Section 684.....</b>	<b>39</b>
<b>C.</b>	<b>Preference of Ward.....</b>	<b>39</b>
<b>D.</b>	<b>Persons Appointed Guardian - Section 690.....</b>	<b>40</b>
<b>E.</b>	<b>Jury Questions.....</b>	<b>40</b>
<b>1.</b>	<b>Burden of Proof - Permanent Guardianship.....</b>	<b>40</b>

2.	Temporary Guardianship - Trial by Jury Issue .....	40
3.	Temporary Guardianship - Burden of Proof .....	40
4.	Proposed Instructions - Applicant - Capacity .....	41
5.	Proposed Instructions - Contestant or Proposed Ward - Capacity.....	41
6.	Qualification or Disqualification of a Proposed Guardian .....	41
	a. Disqualification Grounds .....	41
	b. Applicant's Instructions - Qualification .....	42
	c. Contestant or Proposed Ward Instruction - Disqualification..	42
7.	Designation of Guardian - Issue in Contest.....	42
F.	Order of the Court - Section 693 .....	43
	1. Total Incapacity .....	43
	2. Partial Incapacity.....	43
	3. Period of No Restoration .....	43
G.	The Role of the Attorney for the Guardian in a Guardianship Proceeding...	43
H.	Attorney's Fees.....	44
	1. Applicant.....	44
	2. Good Faith .....	44
	3. Reasonable Fees .....	44
I.	Costs Against Guardianship - Section 669 .....	44
J.	Durable Power of Attorney .....	44
<b>IVX.</b>	<b>POST JUDGMENT REMEDIES .....</b>	<b>44</b>
A.	Preserving Error .....	44
B.	Restoration of Ward .....	46
	1. Sections 694a-694k .....	46
	a. Modification .....	46
	b. Letter .....	46
	c. Investigation .....	46
	d. Citation.....	46
	e. Limitations.....	46
C.	Contests of Application - Section 694B.....	46
D.	Appointment of Attorney Ad Litem - Section 694C	
E.	Hearing - Section 694D.....	47
F.	Findings Required - Section 694E .....	47
G.	Examinations and Reports Relating to Complete Restoration of Ward's Capacity or Modification of Guardianship - Section 694F .....	47
H.	Order of Complete Restoration of Ward's Capacity - Section 694G.....	47
I.	Modification of Guardianship - Section 694H .....	48
J.	Dismissal of Application - Section 694I.....	48
K.	Attorney Retained on Ward's Behalf - Section 694K.....	48
<b>XV.</b>	<b>CONCLUSION .....</b>	<b>48</b>