AN OVERVIEW OF CHAPTER 1301 MANAGEMENT TRUSTS
AND
REFLECTIONS ON CERTAIN
UNANSWERED QUESTIONS ABOUT MANAGEMENT TRUSTS

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I. Overview

A trust established under Chapter 1301 of the Texas Estates Code ("TEC") is an alternative option to a guardianship when a court exercises its discretion to protect the financial estate a ward (a person for whom a guardian has been appointed) or an incapacitated person. Such a trust is defined as a “management trust” under TEC Section 1301.001 and is referred to herein as “Management Trust”.

A Management Trust often provides a less costly and less complex method for the protection of financial interests by (i) bypassing certain fiduciary requirements and administrative obligations typically imposed on a guardian and (ii) placing such responsibilities in a professional trustee. However, the use of a Management Trust still requires adherence to specific guidance set out in Texas Estates Code Chapter 1301 ("Chapter 1301") and close attention to this unique methodology will benefit any person representing a client for whom a Management Trust is created. Management Trusts are used primarily in two situations: (1) where a guardianship for a minor involves a large estate that, absent a trust, will be turned over to the ward at age eighteen; and (2) where a guardianship for an incapacitated person involves such a large sum of money that a corporate fiduciary’s investment expertise is warranted. Johanson’s Texas Estates Code Annotated, 813.

Objectives of this paper are (i) to review the technical requirements for Management Trusts, which are primarily set forth in Chapter 1301, and (ii) to provide a practical “desk reference” for the practitioner. The presentation will follow the organizational outline of Chapter 1301, with references to and excerpts from the specific TEC sections, while also focusing on overall themes of Chapter 1301 and the practical application of the statute.

A. Legislative History.

1. Management Trusts were first incorporated into Texas law in 1993 with the enactment of Section 867 of the Texas Probate Code. With the introduction of Section 867, courts had the authorization to utilize an “867 Trust,” as it was often called, instead of a guardianship to manage property for a minor or incapacitated person. On January 1, 2014, the new Texas Estates Code became effective as the recodification of the Texas Probate Code and the Management Trust provisions of Section 867 now exists in Chapter 1301.

2. While Chapter 1301 provides specific guidance regarding Management Trusts, the text of the statute reflects the legislature’s intent for the court to have broad discretion to apply the provisions of Chapter 1301 in whatever way is in the “best interests” of the person for whom a trust is created. This paper will highlight the many references to acting in the “best interests” of the protected person and will discuss the impact this has on the instructive and limiting sections of the statute.

B. Organization of Statute. Chapter 1301 is divided into subchapters, each logically related to one of four phases in the life of a Management Trust. Subchapter B addresses the steps in creating a Management Trust including the application process, the court’s order of creation, and the court’s first responsibility of appointing a trustee. Subchapter C provides guidance for drafting the terms of the trust. Subchapter D covers the tasks related to the administration of the trust once it has been established. Last, Subchapter E outlines the methods by which to modify, fully revoke, or ultimately terminate a Management Trust.
II. **Creation of Management Trusts**

A Management Trust is a court-ordered trust created for a ward or an incapacitated person defined under TEC Section 1301.001 as a trust created under TEC Sections 1301.053 (in connection with a guardianship proceeding), or under Section 1301.054 (for an incapacitated person without a guardian).

A Management Trust is also subject to the Texas Trust Code ("TTC") (Subchapter B, Title 9, Property Code). TEC §1301.002(a). If ever a conflict arises between the TTC and a provision of Chapter 1301 or of a Management Trust instrument, Chapter 1301 or the trust instrument controls over the TTC. TEC §1301.002(b). Therefore, the provisions of the Estates Code and the Trust Code must be considered together to obtain comprehensive guidance in navigating the use of a Management Trust.

Subject to this statutory groundwork, the first step in creating a Management Trust is to file an application with the proper court to request an order creating a trust for the benefit of a ward or incapacitated person.

**A. Who May Apply?** TEC §1301.051 lists five persons who may apply to a court for the creation of a Management Trust:

1. the guardian of a ward;
2. an attorney ad litem or guardian ad litem appointed to represent the ward or the ward’s interests;
3. a person interested in the welfare of an alleged incapacitated person who does not have a guardian;
4. an attorney ad litem or guardian ad litem appointed to represent an alleged incapacitated person who does not have a guardian; or
5. a person with a physical disability.

**B. Where Do You Apply - Venue?**

1. **Pending Guardianship Proceeding.** An application for the creation of a Management Trust for an alleged incapacitated person under TEC §1301.054 must be filed in the same court in which a proceeding for appointment of a guardian for that person is pending, if any. TEC §1301.052(a).

2. **No Pending Guardianship Proceeding.**
   a) If there is no pending guardianship proceeding on the date the application for creation of the Management Trust is filed, venue for the proceeding to create a trust must be determined in the same manner as venue for a proceeding for the appointment of a guardian, pursuant to TEC §1023.001. TEC §1301.052(b). Therefore, pursuant to TEC Section 1023.001(a), a proceeding for creation of a Management Trust would be brought in the county in which
   - (1) the proposed trust beneficiary resides or is located on the date the application is filed or
   - (2) the principal estate of the proposed trust beneficiary is located.
   b) In the case of a minor, venue would be determined by:
   - (1) the county in which both the minor’s parents or sole managing conservator or,
   - (2) if the parents are deceased, county in which they resided prior to their deaths. TEC §1023.001(b).
C. **Creation of Trust.**

1. **Person has an Appointed Guardian:** On application by one of the persons described in TEC §1301.051, the court with jurisdiction of the proceeding may enter an order creating a Management Trust, if the court finds that creation of the trust is in the best interests of the person with respect to whom the application is filed. TEC §1301.053(a). The court may maintain a trust created under §1301.053 under the same cause number as the guardianship proceeding, if the person for whom the trust is created is a ward or proposed ward. TEC §1301.053(b). See Appendix C - Texas Guardianship Manual: Form 11-1: Application to Create Management Trust (page 31) (wherein the Applicant is the guardian of the estate).

2. **Person is Incapacitated Without an Appointed Guardian:** Regardless of whether an application for guardianship has previously been filed on the alleged incapacitate person’s behalf, upon application by a person authorized under TEC §1301.051, a proper court exercising probate jurisdiction may enter an order that creates a trust for the management of the estate of an alleged incapacitated person who does not have a guardian, if the court, after a hearing, finds that
   a) the person is an incapacitated person, and
   b) the creation of the trust is in that person’s best interests. TEC §1301.054(a).

   Furthermore, TEC §1301.054(a) grants the court the discretion to supersede a pending guardianship application and create a Management Trust instead. A court may find the use of a Management Trust to be in a person’s “best interest” if a trust is more cost and time efficient than a guardianship.

3. **Procedure; Ad Litems.** The hearing on creation of a Management Trust pursuant to Section 1301.054(a) must be conducted using the same procedures and evidentiary standards as are required in a hearing for appointment of a guardian for a proposed ward. TEC §1301.054(b).
   a) Generally, the court shall appoint an attorney ad litem and, if necessary, may appoint a guardian ad litem, to represent the alleged incapacitated person in the hearing to determine incapacity under TEC §1301.054(a). TEC §1301.054(c).
   b) However, if the application for the creation of the trust is filed by a person who has only a physical disability, the court may, but is not required to, appoint an attorney ad litem or guardian ad litem to represent the interests of the person in the hearing to determine incapacity. TEC §1301.054(c-1). The court may maintain a trust created under Section 1301.053 under the same cause number as the guardianship proceeding, if the person for whom the trust is created is a ward or proposed ward. TEC §1301.054(d).
   c) If, after a hearing on an application for creation of a Management Trust for an alleged incapacitated person, pursuant to TEC §1301.054, the court finds that the person for whom the trust is sought to be created is, in fact, incapacitated, but a Management Trust would not be in the person’s best interests, the court may appoint a guardian of the person and/or estate for the incapacitated person, without commencing a separate guardianship proceeding for that purpose. TEC §1301.055.
In review, TEC §1301.054 gives a court the discretion to create a Management Trust instead of respecting a pending guardianship application, and TEC §1301.055 gives a court the discretion to reject a Management Trust application in favor of appointing a guardian. So while, procedurally, both the creation of guardianships and Management Trusts are governed by detailed provisions, the statute ultimately relies on a court's determination of what is in a person's best interests.

4. **Best Interests.** Both TEC §§1301.053 and 1301.054 make the creation of the trust contingent upon a finding that the Management Trust is in the person’s best interests; however, Chapter 1301 does not define the term “best interests” or address the factors the court may consider in determining a person’s best interests.
   a) Thus, the determination will be fact-based analysis; so an attorney representing a person pursuing the creation of a Management Trust should make a compelling argument for the benefits of the Management Trust.
      (1) If an applicant seeks to establish a Chapter 1301 special needs trust, the ward’s best interests will be served by preserving the ward’s eligibility for government benefits.
      (2) If the trust is not a special needs trust, it is presumptively in the ward’s best interests to save the court costs and legal fees associated with a regular guardianship and obtain the advantages of the professional management and broader investment options available to a corporate trustee. The attorney for the applicant seeking to establish a Management Trust should include in the application the reason that a trust would be beneficial for the ward. Guardianship Manual, §11.3:4.

5. **Contents of Order Creating Trust.** An order creating a Management Trust must (1) direct any person or entity holding property that belongs to the person for whom the trust is created or to which that person is entitled to deliver all or part of that property to a person or corporate fiduciary appointed as trustee of the trust; and (2) include terms and limitations placed on the trust. TEC §1301.056.

D. **Trustee.**
   1. **Appointment.**
      a) Unless the Management Trust is created for a person who has only a physical disability, the court shall appoint a trustee that qualifies as a “financial institution,” defined as an institution that has trust powers and exists and does business under the laws of this state, another state, or the United States under Section 201.101 of the Texas Finance Code. TEC §1301.057(a)-(b).

      b) Notwithstanding, the court may appoint a person or entity that is not a financial institution if the court finds that:
         (1) it would be in the best interests of the ward or incapacitated, and
         (2) if the trust principal is greater than $150,000, the applicant for creation of the trust has been unable, after exercising due diligence, to find a financial institution in the geographic area willing to serve as trustee. TEC §1301.057(c).
If that is the case, then under Section 1301.057(d), the court may instead appoint as trustee (1) an individual (including a certified private professional guardian), (2) a non-profit corporation qualified to serve as a guardian, or (3) a guardianship program. TEC §1301.057(c)–(d). To confirm whether there is any financial institution willing to serve as trustee, the attorney seeking creation of the trust should check any lists of corporate fiduciaries located in the state that are maintained at the office of the presiding judge of the statutory probate courts or at the principal office of the Texas Bankers Association. Guardianship Manual, 11.3:3.

2. **Bond Requirement.**
   a) **No Bond:** A trustee that is a corporate fiduciary, or any trustee of a Management Trust for a person with only a physical disability, may serve without posting a bond. TEC §1301.058(a).
   b) **Bond:** Otherwise, the court must require a person serving as trustee of a Management Trust to file with the county clerk a bond in an amount equal to the value of the trust’s principal and projected annual income, and that meets any conditions the court determines are necessary. TEC §1301.058(b).

3. **Other Trustee Provisions.**
   a) Compensation – TEC §1301.101(a)(5). See Part III.B.
   b) Trustee Liability - TEC §1301.103. See Part III.E.
   c) Successor Trustees – TEC §1301.155. See Part IV.G.
   d) Third Party Liability for Trustee Action – TEC §1301.156. See Part IV.H.

III. **Terms of Management Trust**

A. **Required Terms of Trust Instrument.** TEC Section 1301.101 sets out the terms that must be included in a Management Trust for a ward or incapacitated person:
   1. **Sole Beneficiary:** the ward or incapacitated person must be the sole beneficiary of the trust;
   2. **Disbursement:** the trustee may disburse an amount of the trust’s principal or income as the trustee determines is necessary to spend for the beneficiary’s health, education, maintenance, or support;
      a) Note that Form 11-2: Management Trust of the Guardianship Manual (page 33) provides the following direction/guidance about discretionary distributions for “health, education, maintenance, or support”:

   In making any discretionary payments to Beneficiary, Trustee will consider (a) the standard of living to which Beneficiary was accustomed before the creation of the trust, (b) any known resources of Beneficiary, (c) the ability of any person who is legally obligated to support Beneficiary to do so, and (d) any present or future Texas Estates Code provisions governing the use and expenditure of funds held in management trusts.

   Trustee may make any distribution required or permitted under the trust, without the intervention of any guardian or other legal representative, in any of the following ways: (a) to the legal or natural guardian of Beneficiary or to any person who has physical custody of Beneficiary; (b) to any person furnishing care, education, support, or
b) If the beneficiary of the Management Trust is a minor, the parents still have a duty to support the child, the existence of a Management Trust notwithstanding. TEC Section 1156.051 provides that a parent who is the guardian of a ward may **not** use income or corpus from the ward’s estate for the ward’s support, education, or maintenance **unless the guardian presents clear and convincing evidence that the parents are unable to support the ward without unreasonable hardship.**

3. **Trust Principal:** the trust income that the trustee does not disburse for health, education, maintenance or support must be added to the trust principal;

4. **Bond:**
   a) a trustee that is a corporate fiduciary serves without giving a bond; or
   
   b) if trust is created for a person who has only a physical disability, a trustee serves without giving a bond; TEC §1301.101(a-1)(1); and

5. **Trustee Compensation:**
   a) a trustee is entitled to reasonable compensation for services the trustee provides to the trust beneficiary, **subject to the court’s approval; or**
   
   b) if trust is created for a person who has only a physical disability, a trustee is entitled to receive reasonable compensation for services the trustee provides to the trust beneficiary, **without the court’s approval.** TEC §1301.101(a-1)(2).


B. **Trustee’s Compensation.**

1. **Overview.** As noted above, a trustee’s compensation is specifically governed by TEC Sections 1301.101(a)(5), (a-1), and (b).

   a) **Without Court Approval.** If the Management Trust is created for a person who has only a physical disability, a trustee is entitled to receive reasonable compensation for services the trustee provides to the trust beneficiary **without the court’s approval.** TEC §1301.101(a-1)(2). Also, such compensation is **not** required to be determined pursuant to the “Five Percent Rule” applicable to guardians.

   b) **With Court Approval.** If the Management Trust is created for a person who has disability that is not limited to a physical disability, then the trustee’s compensation:
      
      (1) **is subject to the court’s approval** [TEC §1301.101(a)(5)],
      
      (2) **must be paid from the Management Trust’s income, principal,**
       
      or both [TEC §1301.101(b)(1)], and
      
      (3) **must be determined, paid, reduced, and eliminated in the same manner as compensation of a guardian under TEC Chapter 1155 Subchapter A** [TEC §1301.101(b)(2)].

2. **Five Percent Rule.** Chapter 1155 permits the court to set the compensation of a guardian in an **amount not to exceed** (i) five percent of the gross income of the ward’s estate and (ii) five
percent of all money paid out of the estate if the court finds that the guardian has taken care of and managed the estate with due care. TEC §1155.003.

a) “Gross income” does not include Social Security benefits, and Veterans benefits. TEC §1155.001(1).

b) “Money paid out” does not include any money loaned, invested, or paid over on the settlement of a guardianship or a tax-motivated gift made by a ward. TEC §1155.001(2).

Notable case law has expanded the definition of “gross income” to provide more clarity. A commission may not include insurance proceeds or monthly pension benefits, as these are deemed to be corpus and not income. *Gilbert v. Hines*, 32 S.W.2d 876, 878 (Tex. Civ. App. – Dallas 1930, no writ). Also, distributions of income generated by a trust are considered to be “gross income,” for purposes of the five percent commission. *Henderson v. Viesca*, 922 S.W.2d 876, 559 (Tex. App. – San Antonio 1996, writ den.)

3. **Discretion of the Court.**

a) The court has discretion to review and modify the compensation authorized under the Five Percent Rule if the court finds that the amount is unreasonably low when considering the services provided by the trustee. TEC §§1155.003(b), 1155.006(a). Prudent practice dictates that the trustee should keep a “time log” of all activities and duties performed to be able to establish when applicable that the trustee’s compensation would be unreasonably low under the Five Percent Rule.

b) Conversely, the court may reduce or eliminate the trustee’s compensation if, on review of an annual or final accounting or otherwise, the court finds that the trustee (i) has received compensation in excess of the amount permitted under the five percent rule, (ii) has not adequately performed the duties required, or (iii) has been removed for cause. TEC §§1155.007-.008.

c) It should be noted that corporate trustees are typically compensated pursuant to their “fee schedules” in a non-management trust situation. An area of uncertainty and dependent upon the court (and the facts and circumstances surrounding the Management Trust) is the relevance and significance of a trustee’s fee schedule in determining what is reasonable compensation.

(1) Texas Guardianship Manual: Forms 11-2, 11-17, and 11-18 all make reference to a trustee’s fee schedule in setting compensation. Specifically, Section 9 of Form 11-2: Management Trust of the Texas Guardianship Manual, provides, in part, the following:

*Trustee’s Compensation and Expenses. Trustee will be entitled to be paid a fair and reasonable compensation for its services out of the trust assets, either annually, quarterly, or monthly, at its option. Compensation will be in accordance with customary and prevailing charges for similar services charged by corporate fiduciaries in [city, county] County, Texas and in compliance with the existing guardianship compensation statutes. Trustee’s compensation will not exceed Trustee’s then-published fee schedule.* Trustee will be entitled to recover from the trust all reasonable expenses incurred by Trustee in administration of the trust. Trustee’s initial fee and expense schedule has been attached to this trust agreement and approved by the Court at the inception of the trust, but the Court will review all trustee fees and expenses incurred
and paid annually and will consider such paid fees in light of the then-prevailing charges for similar services by corporate fiduciaries in [city, county] County, Texas. The Court may, on its own motion or at the request of Trustee or any other party interested in the welfare of Beneficiary, take any action it deems proper with respect to such fees and expenses.

**Trustee’s fee schedule attached to this trust agreement constitutes the basis for Trustee’s compensation, subject only to review by the Court on an annual basis.** (emphasis added)

(2) However, many courts require strict compliance on the Five Percent Rule in determining the “reasonable” compensation of a trustee of a Management Trust, subject to possible modification if the compensation is unreasonably low when considering the services provided by the trustee. In other words, a corporate trustee’s fee schedule has no bearing on the determination of compensation. Because of this uncertainty, it would be prudent to check with the court with jurisdiction over the matter to understand its common practices.

(3) See Appendix C:
   (a) Form 11-2, Section 9: Management Trust (page 35);
   (b) Form 11-17: Application for Payment of Trustee’s Compensation (page 72); and
   (c) Form 11-18: Order Authorizing Trustee’s Compensation (page 73).

C. **Exceptions to Required Terms.**

1. The court creating or modifying a Management Trust may omit or modify otherwise applicable terms:
   a) if the court is creating the trust for a person who has only a physically disability or
   b) if the court determines that the omission or modification is necessary and appropriate for the person for whom the trust is created to be eligible to receive public benefits or assistance under a state or federal program that is not otherwise available to the person; or
   (1) is in the best interests of the person for whom the trust is created. TEC §1301.101(c).

2. For example, for a “special needs” Management Trust, the “distribution provision” should permit only distributions for the ward’s needs not covered by a government benefits program. Guardianship Manual, §11.3:6.
   a) Note that Form 11-2: Management Trust of the Guardianship Manual (page 33) provides the following:

   *No distribution from the trust may be made to or for the benefit of Beneficiary to satisfy any obligation if that obligation would otherwise be met from any federal or state assistance program if the trust had not been created.*
b) Note that Section 5 of Form 11-3: Special Needs Trust Termination Provisions of the Guardianship Manual (page 38) provides the following:

_Distribution of Income and Principal._ Trustee, [name of trustee], shall pay funds for the benefit of [name of beneficiary], Beneficiary, for [his/her] lifetime, subject to the conditions provided below. Payments will be made from the income or principal, up to and including the whole amount, as Trustee, in Trustee’s sole and complete discretion, may from time to time deem necessary or advisable for the satisfaction of Beneficiary’s supplemental needs as defined in this Trust. ... As used in this Trust, “supplemental needs” refer to the requisites for maintaining Beneficiary’s good health, safety, and welfare when, in the discretion of Trustee, such requisites are not being provided by any public agency, local or county agency, office or department of the state of Texas, of any other state, or of the United States (a “governmental agency”). Distribution shall be limited so that Beneficiary is not disqualified from receiving public benefits to which [he/she] is otherwise entitled, and this Trust shall be administered so as to SUPPLEMENT AND NOT SUPPLANT such benefits.

3. This expansive exception under TEC Section 1301.101(c) to the “required terms” highlights the legislature’s intention of granting the court broad discretion when customizing the terms of a trust for each individual’s circumstances and needs. This begs the question of whether the “required” terms are, in fact, required or rather are a starting point for the court to accommodate the unique needs of the beneficiary.

D. **Optional Terms of Trust Instrument.**

1. A Management Trust created for a ward or incapacitated person may provide that the trustee may make a distribution, payment, use, or application of trust funds, as necessary, for the health, education, maintenance or support of (i) the trust beneficiary or (ii) another person whom the trust beneficiary is legally obligated to support, without the intervention of a guardian or representative of the ward or incapacitated person. TEC §1301.102(a).

2. The trust terms may permit such transfers to
   a) the ward’s guardian;
   b) a person who has physical custody of the trust beneficiary or of someone whom the trust beneficiary is legally obligated to support; or
   c) a person providing a good or service to the trust beneficiary or to someone whom the trust is legally obligated to support. Id.

3. These third party distributions are not in conflict with TEC Section 1301.101 to the extent that they are incorporated into a trust intended to qualify as a special needs trust. However, for all other Management Trusts, no distributions should be permitted for the benefit of others whom have a legal obligation to support the ward, especially in a trust for a minor beneficiary.

E. **Terms Related to Trustee Duty or Liability.** While a court may include any optional provisions that are not in conflict with a required term, or even omit or modify a required term if found to be in the best interests of the person for whom the trust is created, a provision of the trust that relieves a trustee from a duty or liability imposed by this chapter or the TTC is enforceable only if:

1. the provision is limited to specific facts and circumstances unique to the property of the trust and is not applicable generally to the trust; and

2. the court creating or modifying the trust makes a specific finding by clear and convincing evidence that the provision is in the best interest of the trust beneficiary.

TEC §1301.103. This provision was added in response to *Texas Commerce Bank v. Grizzle*, 96 S.W.3d 240 (Tex. 2002) in order to preclude the routine insertion of exculpatory clauses in court-created trusts. *Johanson’s Texas Estates Code Annotated* pg. 818.

IV. **Administration of Management Trusts**

A. **Jurisdiction over Trust Matters.** A court that creates a Management Trust has the same jurisdiction to hear matters relating to the trust as the court has with respect to guardianship and other related matters. TEC §1301.151.

B. **Termination of Guardianship.** On or at any time after the creation of a Management Trust, the court may discharge the guardian of the ward’s estate if the court determines that the discharge is in the ward’s best interests. TEC §1301.152.

C. **Investments.**

1. TEC Section 1301.153 highlights one investment, the Texas Tomorrow Fund (established by Subchapter F, Chapter 54, Education Code), in which the trustee of a Management Trust may invest trust funds if the trustee determines that investment is in the best interest of the trust beneficiary. This provision does not speak to any other investment requirements or restrictions, so a trustee’s investment decisions are otherwise governed by the TTC. TEC §1301.002(b).

2. Unlike a guardianship, with mandatory court oversight and specific investment limitations outlined in TEC Chapter 1161, the trustee of a Management Trust is only subject to the Uniform Prudent Investor Act in the Property Code, which provides broad “default” rules for reasonable investment practices and thus provides flexibility to the trustee in terms of curating an investment strategy for the Management Trust assets.

D. **Initial Accountings.**

1. Initial trust accounting obligations are imposed on a trustee of a Management Trust created for a person who on the date the trust is created is:
   a) a ward under an existing guardianship; or
   b) a proposed ward with respect to whom an application for guardianship has been filed and is pending. TEC §1301.1535(a).

2. Not later than the 30th day after the date such trustee receives property into the trust, the trustee shall file with the court that created the guardianship or the court in which the application for guardianship was filed, a report (i.e., an initial accounting) (i) describing all property held
in the trust on the date of the report and (ii) stating the value of the property on that date. TEC §1301.1535(b).

3. Note that TEC Section 1301.1535 is silent as to trustees for a trust created for an incapacitated person without a guardian so the filing of such initial report/accounting is not statutorily required; inquiring about the customary practice of the court overseeing the Management Trust can always clarify the ambiguity.

E. **Annual Accountings.**

1. Generally, the trustee of a Management Trust:
   a) shall prepare annual accounting of transactions in the trust in the same manner and form that is required of a guardian of the estate under TEC Section 1163.001, et seq.;
   b) shall file the accounting with the court for court review in the same manner as an annual account prepared by a guardian; and
   c) shall provide a copy of the annual account to the guardian of the ward’s estate or person. TEC §1301.154(a)-(c).

See Appendix C: (i) Form 11-5: First Annual Account of Trustee of Management Trust (page 44) and (ii) Form 11-6: Order Approving Annual Account of Management Trust (page 47).

2. However, the court may not require a trustee of a trust created for a person with only a physical disability to prepare and file an annual accounting. TEC §1301.154(d).

F. **Income Tax.**

1. **Grantor Trust Treatment.** A Management Trust is considered a “grantor trust,” which means for federal income tax purposes:
   a) the grantor (i.e., the trust beneficiary) is considered the owner of the trust assets and
   b) the Management Trust is disregarded for federal income tax purposes and, therefore, any taxable income, credits, or deductions attributable to the trust assets will be taxed on the trust beneficiary’s income tax return. See 26 U.S.C §§671-678.

2. Note that Form 11-2: Management Trust of the Guardianship Manual (page 33) provides the following:

   *Trustee is specifically authorized to pay accounting fees for preparation of Beneficiary’s personal income tax return and to pay any income tax owed by Beneficiary or the trust that is attributable to income generated by the trust.*

G. **Successor Trustee.** If the trustee of a Management Trust resigns, becomes ineligible, or is removed, the court may appoint a successor trustee. TEC §1301.155.

H. **Liability of Certain Persons for Conduct of Trustee.** Neither the guardian of the trust beneficiary, the guardian of the estate of the trust beneficiary, nor a surety on the guardian’s bond is liable for the acts or omissions of the trustee of a Management Trust. TEC §1301.156.
V. Modification, Revocation, or Termination of Management Trusts

A. Modification or Revocation of Trust.
   1. The court has the broad capability to amend, modify, or revoke a Management Trust at any time before the date of the trust’s termination. TEC §1301.201(a). However, the trust may not be revoked by
      a) any individual for whom the Management Trust is created or
      b) the guardian of such individual’s estate. TEC §1301.201(b).

   So while, a management trust is classified as a revocable trust, this provision makes clear that this power of revocation is solely held by the court.

   2. TEC Section 1301.201 does not contain a specific standard for any such modification or revocation. Presumably, the standard for modification of the Management Trust is governed by TEC Section 1301.101(c) for “required” terms (permitted in order to receive public benefits or if in the best interests of the beneficiary) and TEC Section 1301.102(b) for “optional” terms (permitted if not in conflict with Section 1301.101).

B. Transfer to Pooled Trust Subaccount.
   1. If the court determines that it is in the best interests of the person for whom a Management Trust is created, the court may order the transfer of all property in the Management Trust to a pooled trust subaccount, to be established in accordance with Chapter 1302. TEC §1301.202(a).

   2. Pooled trust subaccounts are accounts established solely for the benefit of one beneficiary in a pooled trust, which is a trust that meets federal requirements for purposes of determining the eligibility of a person who is disabled for medical assistance programs like Medicare, Medicaid, etc. TEC §1302.001. A technical discussion of pooled trust subaccounts is outside of the scope of this paper; however, Chapter 1302 provides another example of the discretion built into the statute in order to satisfy the legislative goal of providing the courts the freedom to implement a Management Trust in whatever way that best serves the interests of a ward or incapacitated person.

C. Termination of Trust.
   1. Minor.
      a) If the person for whom a Management Trust is created is a minor, the trust terminates on the earlier of the person’s death and the person’s eighteenth birthday, or on a date selected by the court that is not later than the person's twenty-fifth birthday. TEC §1301.203(a). Some courts will not permit a Management Trust to extend beyond the beneficiary's eighteenth birthday, assuming the beneficiary is not otherwise incapacitated. If the applicant wants the trust to extend past the beneficiary’s eighteenth birthday, the applicant should check with the court in which the guardianship is pending. Guardianship Manual, 11.3:12.

      b) If the minor beneficiary also suffers from a disability that would require the beneficiary to access a government benefits program, the Management Trust may be established as a special needs trust. However, some courts still require that the Management Trust terminate at the age of twenty-five, even though the ward is likely never to regain capacity. In this situation, the trust must be modified prior to the beneficiary reaching the age of twenty-five years in order to ensure that the beneficiary’s government benefits will not be reduced or terminated. Guardianship Manual, 11.3:12.
c) If the basis of implementing a management trust is not solely due to the minority of the beneficiary, but rather is due to long-term disability or incapacity, a revocation and restatement of the management trust upon the beneficiary reaching the age of majority can ensure continued protection of the beneficiary without disrupting access to public benefits. For examples of forms related to the restatement process, see the following:

1. Appendix C - Texas Guardianship Manual: Form 11-10: Joint Application for Termination of Original Management Trust, Discharge of Trustee of Original Management Trust, Creation of Restated Management Trust, and Appointment of Trustee of Restated Management Trust (page 54)
3. Appendix C - Texas Guardianship Manual: Form 11-12: Order Creating Restated Management Trust and Directing Trustee to File Final Account (page 62)

2. If the person for whom a Management Trust is created is not a minor, the trust terminates according to the terms of the trust; on the date the court determines that continuing the trust is no longer in the ward’s best interests, subject to TEC Section 1301.202(c) (regarding transfers of all trust property to a pooled trust subaccount); or on the person’s death. TEC §1301.203(b).

D. Terminating Distribution.
   1. Final Account.
      a) On termination of a Management Trust, the trustee shall prepare a final account in the same manner as a guardian, pursuant to TEC Sections 1204.101 and 1204.102. TEC §1301.204(a)(1).

      b) After the court approves the accounting, the trustee shall distribute the remaining trust assets as follows:
         1. to the trust beneficiary when the trust terminates on the trust’s own terms;
         2. to the successor trustee if one is appointed; or
         3. to the representative of a deceased trust beneficiary. TEC §1301.204(a)(2).

      c) The court may not require a trustee of a trust created for a person with only a physical disability to prepare and file a final account with the court, in which case, the assets shall then be distributed in the manner provided above in subparagraph (b) of this Part D.1. TEC §1301.204(b).

   2. The trustee should obtain a receipt from the person or entity receiving the property, and file it with the court along with the application and order to discharge the trustee. Guardianship Manual, §11.3:15.

   3. See related forms - Appendix C - Texas Guardianship Manual:
      a) Form 11-13: Final Account (page 64)
      b) Form 11-14: Order Approving Final Account and Directing Funding of Restated Management Trust (page 67)
      c) Form 11-15: Application to Discharge Trustee (page 70)
      d) Form 11-16: Order Discharging Trustee (page 71)
APPENDIX A

CHAPTER 1301
CHAPTER 1301. MANAGEMENT TRUSTS
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- Sec. 1301.201. MODIFICATION OR REVOCATION OF TRUST
- Sec. 1301.202. TRANSFER TO POOLED TRUST SUBACCOUNT
- Sec. 1301.203. TERMINATION OF TRUST
- Sec. 1301.204. DISTRIBUTION OF TRUST PROPERTY
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1301.001. DEFINITION. In this chapter, "management trust" means a trust created under Section 1301.053 or 1301.054.

Sec. 1301.002. APPLICABILITY OF TEXAS TRUST CODE. (a) A management trust is subject to Subtitle B, Title 9, Property Code.

(b) To the extent of a conflict between Subtitle B, Title 9, Property Code, and a provision of this chapter or of a management trust, the provision of this chapter or of the trust controls.

SUBCHAPTER B. CREATION OF MANAGEMENT TRUSTS

Sec. 1301.051. ELIGIBILITY TO APPLY FOR CREATION OF TRUST. The following persons may apply for the creation of a trust under this subchapter:

1. the guardian of a ward;
2. an attorney ad litem or guardian ad litem appointed to represent a ward or the ward's interests;
3. a person interested in the welfare of an alleged incapacitated person who does not have a guardian;
4. an attorney ad litem or guardian ad litem appointed to represent an alleged incapacitated person who does not have a guardian; or
5. a person who has only a physical disability.

Sec. 1301.052. VENUE FOR PROCEEDING INVOLVING TRUST FOR AN ALLEGED INCAPACITATED PERSON. (a) An application for the creation of a trust under Section 1301.054 for an alleged incapacitated person must be filed in the same court in which a proceeding for the appointment of a guardian for the person is pending, if any.

(b) If a proceeding for the appointment of a guardian for an alleged incapacitated person is not pending on the date an application is filed for the creation of a trust under Section 1301.054 for the person, venue for a proceeding to create a trust must be determined in the same manner as venue for a proceeding for the appointment of a guardian is determined under Section 1023.001.

Sec. 1301.053. CREATION OF TRUST. (a) On application by an appropriate person as provided by Section 1301.051 and subject to Section 1301.054(a), if applicable, the court with jurisdiction over the proceedings may enter an order that creates a trust for the management of the funds of the person with respect to whom the application is filed if the court finds that the creation of the trust is in the person's best interests.

(b) The court may maintain a trust created under this section under the same cause number as the guardianship proceeding, if the person for whom the trust is created is a ward or proposed ward.
Sec. 1301.054. CREATION OF TRUST FOR INCAPACITATED PERSON WITHOUT GUARDIAN.
(a) On application by an appropriate person as provided by Section 1301.051 and regardless of whether an application for guardianship has been filed on the alleged incapacitated person's behalf, a proper court exercising probate jurisdiction may enter an order that creates a trust for the management of the estate of an alleged incapacitated person who does not have a guardian if the court, after a hearing, finds that:
   (1) the person is an incapacitated person; and
   (2) the creation of the trust is in the incapacitated person's best interests.
(b) The court shall conduct the hearing to determine incapacity under Subsection (a) using the same procedures and evidentiary standards as are required in a hearing for the appointment of a guardian for a proposed ward.
(c) Except as provided by Subsection (c-1), the court shall appoint an attorney ad litem and, if necessary, may appoint a guardian ad litem, to represent the interests of the alleged incapacitated person in the hearing to determine incapacity under Subsection (a).
(c-1) If the application for the creation of the trust is filed by a person who has only a physical disability, the court may, but is not required to, appoint an attorney ad litem or guardian ad litem to represent the interests of the person in the hearing to determine incapacity under Subsection (a).
(d) The court may maintain a trust created under this section under the same cause number as the guardianship proceeding, if the person for whom the trust is created is a ward or proposed ward.

Sec. 1301.055. AUTHORITY OF COURT TO APPOINT GUARDIAN INSTEAD OF CREATING TRUST. If, after a hearing under Section 1301.054, the court finds that the person for whom the application was filed is an incapacitated person but that it is not in the incapacitated person's best interests for the court to create a trust under this subchapter for the incapacitated person's estate, the court may appoint a guardian of the person or estate, or both, for the incapacitated person without commencing a separate proceeding for that purpose.

Sec. 1301.056. CONTENTS OF ORDER CREATING TRUST. An order creating a management trust must:
(1) direct any person or entity holding property that belongs to the person for whom the trust is created or to which that person is entitled to deliver all or part of that property to a person or corporate fiduciary appointed as trustee of the trust; and
(2) include terms and limitations placed on the trust.

Sec. 1301.057. APPOINTMENT OF TRUSTEE.
(a) In this section, "financial institution" means a financial institution, as defined by Section 201.101, Finance Code, that has trust powers and exists and does business under the laws of this state, another state, or the United States.
(b) Except as provided by Subsection (c), the court shall appoint a financial institution to serve as trustee of a management trust, other than a management trust created for a person who has only a physical disability.
(c) The court may appoint a person or entity described by Subsection (d) to serve as trustee of a management trust created for a ward or incapacitated person instead of appointing a financial institution to serve in that capacity if the court finds:
   (1) that the appointment is in the **best interests** of the ward or incapacitated person for whom the trust is created; and
   (2) if the value of the trust's principal is more than $150,000, that the applicant for the creation of the trust, after the exercise of due diligence, has been unable to find a financial institution in the geographic area willing to serve as trustee.

(d) The following are eligible for appointment as trustee of a management trust created for a ward or incapacitated person under Subsection (c):
   (1) an individual, including an individual who is certified as a private professional guardian;
   (2) a nonprofit corporation qualified to serve as a guardian; and
   (3) a guardianship program.

**Sec. 1301.058. BOND REQUIREMENTS FOR TRUSTEES.**
(a) The following serve without giving a bond in accordance with the trust terms required by Sections 1301.101(a)(4) and (a-1):
   (1) a trustee of a management trust that is a corporate fiduciary; and
   (2) any other trustee of a management trust created for a person who has only a physical disability.

(b) Except as provided by Subsection (a), the court shall require a person serving as trustee of a management trust to file with the county clerk a bond that:
   (1) is in an amount equal to the value of the trust's principal and projected annual income; and
   (2) meets the conditions the court determines are necessary.

**SUBCHAPTER C. TERMS OF MANAGEMENT TRUST**

**Sec. 1301.101. REQUIRED TERMS.**
(a) Except as provided by Subsection (c), a management trust created for a ward or incapacitated person must provide that:
   (1) the ward or incapacitated person is the sole beneficiary of the trust;
   (2) the trustee may disburse an amount of the trust's principal or income as the trustee determines is necessary to spend for the health, education, maintenance, or support of the person for whom the trust is created;
   (3) the trust income that the trustee does not disburse under Subdivision (2) must be added to the trust principal;
   (4) a trustee that is a corporate fiduciary serves without giving a bond; and
   (5) subject to the court's approval and Subsection (b), a trustee is entitled to receive reasonable compensation for services the trustee provides to the person for whom the trust is created as the person's trustee.

(a-1) A management trust created for a person who has only a physical disability must provide that the trustee of the trust:
   (1) serves without giving a bond; and
   (2) is entitled to receive, without the court's approval, reasonable compensation for services the trustee provides to the person as the person's trustee.
(b) A trustee's compensation under Subsection (a)(5) must be:
   (1) paid from the management trust's income, principal, or both; and
   (2) determined, paid, reduced, and eliminated in the same manner as compensation of a
       guardian under Subchapter A, Chapter 1155.

(c) The court creating or modifying a management trust may omit or modify otherwise applicable terms
    required by Subsection (a), (a-1), or (b) if the court is creating the trust for a person who has only a
    physical disability, or if the court determines that the omission or modification:
    (1) is necessary and appropriate for the person for whom the trust is created to be eligible to
        receive public benefits or assistance under a state or federal program that is not otherwise
        available to the person; or
    (2) is in the best interests of the person for whom the trust is created.

Sec. 1301.102. OPTIONAL TERMS.
(a) A management trust created for a ward or incapacitated person may provide that the trustee make
    a distribution, payment, use, or application of trust funds for the health, education, maintenance, or
    support of the person for whom the trust is created or of another person whom the person for whom
    the trust is created is legally obligated to support:
    (1) as necessary and without the intervention of:
        (A) a guardian or other representative of the ward; or
        (B) a representative of the incapacitated person; and
    (2) to:
        (A) the ward's guardian;
        (B) a person who has physical custody of the person for whom the trust is created or of
            another person whom the person for whom the trust is created is legally obligated to
            support; or
        (C) a person providing a good or service to the person for whom the trust is created or
            to another person whom the person for whom the trust is created is legally obligated to
            support.

(b) The court may include additional provisions in a management trust on the trust's creation or
    modification under this chapter if the court determines the addition does not conflict with Section
    1301.101.

Sec. 1301.103. ENFORCEABILITY OF CERTAIN TERMS.
A provision in a management trust created for a ward or incapacitated person that relieves a trustee
from a duty or liability imposed by this chapter or Subtitle B, Title 9, Property Code, is enforceable only
if:
   (1) the provision is limited to specific facts and circumstances unique to the property of that
       trust and is not applicable generally to the trust; and
   (2) the court creating or modifying the trust makes a specific finding that there is clear and
       convincing evidence that the inclusion of the provision is in the best interests of the trust
       beneficiary.
SUBCHAPTER D. ADMINISTRATION OF MANAGEMENT TRUSTS

Sec. 1301.151. JURISDICTION OVER TRUST MATTERS. A court that creates a management trust has the same jurisdiction to hear matters relating to the trust as the court has with respect to guardianship and other matters covered by this title.

Sec. 1301.152. COURT'S AUTHORITY TO DISCHARGE GUARDIAN OF ESTATE. On or at any time after the creation of a management trust, the court may discharge the guardian of the ward's estate if the court determines that the discharge is in the ward's best interests.

Sec. 1301.153. INVESTMENT IN TEXAS TOMORROW FUND. The trustee of a management trust may invest trust funds in the Texas tomorrow fund established by Subchapter F, Chapter 54, Education Code, if the trustee determines that investment is in the best interest of the ward or incapacitated person for whom the trust is created.

Sec. 1301.1535. INITIAL ACCOUNTING BY CERTAIN TRUSTEES REQUIRED. (a) This section applies only to a trustee of a management trust created for a person who on the date the trust is created is:

  (1) a ward under an existing guardianship; or
  (2) a proposed ward with respect to whom an application for guardianship has been filed and is pending.

(b) Not later than the 30th day after the date a trustee to which this section applies receives property into the trust, the trustee shall file with the court that created the guardianship or the court in which the application for guardianship was filed a report describing all property held in the trust on the date of the report and specifying the value of the property on that date.

Sec. 1301.154. ANNUAL ACCOUNTING. (a) The trustee of a management trust created for a ward shall prepare and file with the court an annual accounting of transactions in the trust in the same manner and form that is required of a guardian of the estate under this title.

(b) The trustee of a management trust created for a ward shall provide a copy of the annual account to the guardian of the ward's estate or person.

(c) The annual account is subject to court review and approval in the same manner that is required of an annual account prepared by a guardian under this title.

(d) The court may not require a trustee of a trust created for a person who has only a physical disability to prepare and file with the court the annual accounting as described by Subsection (a).

Sec. 1301.155. APPOINTMENT OF SUCCESSOR TRUSTEE. The court may appoint a successor trustee if the trustee of a management trust resigns, becomes ineligible, or is removed.

Sec. 1301.156. LIABILITY OF CERTAIN PERSONS FOR CONDUCT OF TRUSTEE. The guardian of the person or of the estate of a ward for whom a management trust is created or the surety on the guardian's bond is not liable for an act or omission of the trustee of the trust.
SUBCHAPTER E. MODIFICATION, REVOCATION, OR TERMINATION OF MANAGEMENT TRUSTS

Sec. 1301.201. MODIFICATION OR REVOCATION OF TRUST.
(a) The court may modify or revoke a management trust at any time before the date of the trust's termination.

(b) The following may not revoke a management trust:
   (1) the ward for whom the trust is created or the guardian of the ward's estate;
   (2) the incapacitated person for whom the trust is created; or
   (3) the person who has only a physical disability for whom the trust is created.

Sec. 1301.202. TRANSFER TO POOLED TRUST SUBACCOUNT.
(a) If the court determines that it is in the best interests of the person for whom a management trust is created, the court may order the transfer of all property in the management trust to a pooled trust subaccount established in accordance with Chapter 1302.

(a-1) For purposes of a proceeding to determine whether to transfer property from a management trust to a pooled trust subaccount, the court may, but is not required to, appoint an attorney ad litem or guardian ad litem to represent the interests of a person who has only a physical disability for whom the management trust was created.

(b) The transfer of property from the management trust to the pooled trust subaccount shall be treated as a continuation of the management trust and may not be treated as the establishment of a new trust for purposes of 42 U.S.C. Section 1396p(d)(4)(A) or (C) or otherwise for purposes of the management trust beneficiary's eligibility for medical assistance under Chapter 32, Human Resources Code.

(c) The court may not allow termination of the management trust from which property is transferred under this section until all of the property in the management trust has been transferred to the pooled trust subaccount.

Sec. 1301.203. TERMINATION OF TRUST.
(a) If the person for whom a management trust is created is a minor, the trust terminates on:
   (1) the earlier of:
       (A) the person's death; or
       (B) the person's 18th birthday; or
   (2) the date provided by court order, which may not be later than the person's 25th birthday.

(b) If the person for whom a management trust is created is not a minor, the trust terminates:
   (1) according to the terms of the trust;
   (2) on the date the court determines that continuing the trust is no longer in the person's best interests, subject to Section 1301.202(c); or
   (3) on the person's death.
Sec. 1301.204. DISTRIBUTION OF TRUST PROPERTY.
(a) Unless otherwise provided by the court and except as provided by Subsection (b), the trustee of a
management trust shall:
   (1) prepare a final account in the same form and manner that is required of a guardian under
       Sections 1204.101 and 1204.102; and
   (2) on court approval, distribute the principal or any undistributed income of the trust to:
       (A) the ward or incapacitated person when the trust terminates on the trust's own terms;
       (B) the successor trustee on appointment of a successor trustee; or
       (C) the representative of the deceased ward's or incapacitated person's estate on the
           ward's or incapacitated person's death.
(b) The court may not require a trustee of a trust created for a person who has only a physical disability
to prepare and file with the court a final account as described by Subsection (a)(1). The trustee shall
distribute the principal and any undistributed income of the trust in the manner provided by Subsection
(a)(2) for a trust the beneficiary of which is a ward or incapacitated person.
APPENDIX B

Other Texas Statutes Applicable to Management Trusts
Sec. 1023.001. VENUE FOR APPOINTMENT OF GUARDIAN.
(a) Except as otherwise authorized by this section, a proceeding for the appointment of a guardian for the person or estate, or both, of an incapacitated person shall be brought in the county in which the proposed ward resides or is located on the date the application is filed or in the county in which the principal estate of the proposed ward is located.

(b) A proceeding for the appointment of a guardian for the person or estate, or both, of a minor may be brought:
   (1) in the county in which both the minor’s parents reside;
   (2) if the parents do not reside in the same county, in the county in which the parent who is the sole managing conservator of the minor resides, or in the county in which the parent who is the joint managing conservator with the greater period of physical possession of and access to the minor resides;
   (3) if only one parent is living and the parent has custody of the minor, in the county in which that parent resides;
   (4) if both parents are dead but the minor was in the custody of a deceased parent, in the county in which the last surviving parent having custody resided; or
   (5) if both parents of a minor child have died in a common disaster and there is no evidence that the parents died other than simultaneously, in the county in which both deceased parents resided at the time of their simultaneous deaths if they resided in the same county.

(c) A proceeding for the appointment of a guardian who was appointed by will may be brought in the county in which the will was admitted to probate or in the county of the appointee’s residence if the appointee resides in this state.

(d) Repealed by Acts 1999, 76th Leg., ch. 379, Sec. 10, eff. Sept. 1, 1999.

Sec. 1155.001. DEFINITIONS.
In this subchapter:
   (1) “Gross income” does not include United States Department of Veterans Affairs or social security benefits received by a ward.
   (2) “Money paid out” does not include any money loaned, invested, or paid over on the settlement of a guardianship or a tax-motivated gift made by a ward.
Sec. 1155.003. COMPENSATION FOR GUARDIAN OF THE ESTATE.
(a) The guardian of an estate is entitled to reasonable compensation on application to the court at the time the court approves an annual or final accounting filed by the guardian under this title.

(b) A fee of five percent of the gross income of the ward's estate and five percent of all money paid out of the estate, subject to the award of an additional amount under Section 1155.006(a) following a review under Section 1155.006(a)(1), is considered reasonable under this section if the court finds that the guardian has taken care of and managed the estate in compliance with the standards of this title.

Sec. 1155.004. CONSIDERATIONS IN AUTHORIZING COMPENSATION.
In determining whether to authorize compensation for a guardian under this subchapter, the court shall consider:
(1) the ward's monthly income from all sources; and
(2) whether the ward receives medical assistance under the state Medicaid program.

Sec. 1155.005. MAXIMUM AGGREGATE COMPENSATION.
Except as provided by Section 1155.006(a) for a fee the court determines is unreasonably low, the aggregate fee of the guardian of the person and guardian of the estate may not exceed an amount equal to five percent of the gross income of the ward's estate plus five percent of all money paid out of the estate.

Sec. 1155.006. MODIFICATION OF UNREASONABLY LOW COMPENSATION; AUTHORIZATION FOR PAYMENT OF ESTIMATED QUARTERLY COMPENSATION.
(a) On application of an interested person or on the court's own motion, the court may:
(1) review and modify the amount of compensation authorized under Section 1155.002(a) or 1155.003 if the court finds that the amount is unreasonably low when considering the services provided as guardian; and
(2) authorize compensation for the guardian in an estimated amount the court finds reasonable, to be paid on a quarterly basis before the guardian files an annual or final accounting, if the court finds that delaying the payment of compensation until the guardian files an accounting would create a hardship for the guardian.

(b) A finding of unreasonably low compensation may not be established under Subsection (a) solely because the amount of compensation is less than the usual and customary charges of the person or entity serving as guardian.

Sec. 1155.007. REDUCTION OR ELIMINATION OF ESTIMATED QUARTERLY COMPENSATION.
(a) A court that authorizes payment of estimated quarterly compensation under Section 1155.006(a) may later reduce or eliminate the guardian's compensation if, on review of an annual or final accounting or otherwise, the court finds that the guardian:
(1) received compensation in excess of the amount permitted under this subchapter;
(2) has not adequately performed the duties required of a guardian under this title; or
(3) has been removed for cause.

(b) If a court reduces or eliminates a guardian's compensation as provided by Subsection (a), the guardian and the surety on the guardian's bond are liable to the guardianship estate for any excess compensation received.
Sec. 1155.008. DENIAL OF COMPENSATION.
On application of an interested person or on the court's own motion, the court may wholly or partly deny a fee authorized under this subchapter if:

(1) the court finds that the guardian has not adequately performed the duties required of a guardian under this title; or
(2) the guardian has been removed for cause.

CHAPTER 1163. ANNUAL ACCOUNT AND OTHER EXHIBITS AND REPORTS
SUBCHAPTER A. ANNUAL ACCOUNT AND OTHER EXHIBITS BY GUARDIAN OF THE ESTATE

Sec. 1163.001. INITIAL ANNUAL ACCOUNT OF ESTATE.
(a) Not later than the 60th day after the first anniversary of the date the guardian of the estate of a ward qualifies, unless the court extends that period, the guardian shall file with the court an account consisting of a written exhibit made under oath that:

(1) lists all claims against the estate presented to the guardian during the period covered by the account; and
(2) specifies:

(A) which claims have been:
   (i) allowed by the guardian;
   (ii) paid by the guardian; or
   (iii) rejected by the guardian and the date the claims were rejected; and
(B) which claims have been the subject of a lawsuit and the status of that lawsuit.

(b) The account must:

(1) show all property that has come to the guardian's knowledge or into the guardian's possession that was not previously listed or inventoried as the ward's property;
(2) show any change in the ward's property that was not previously reported;
(3) provide a complete account of receipts and disbursements for the period covered by the account, including the source and nature of the receipts and disbursements, with separate listings for principal and income receipts;
(4) provide a complete, accurate, and detailed description of:
   (A) the property being administered;
   (B) the condition of the property and the use being made of the property; and
   (C) if rented, the terms on which and the price for which the property was rented;
(5) show the cash balance on hand and the name and location of the depository where the balance is kept;
(6) show any other cash held in a savings account or other manner that was deposited subject to court order and the name and location of the depository for that cash; and
(7) provide a detailed description of the personal property of the estate that shows how and where the property is held for safekeeping.

(c) For bonds, notes, and other securities, the description required by Subsection (b)(7) must include:

(1) the names of the obligor and obligee or, if payable to bearer, a statement that the bond, note, or other security is payable to bearer;
(2) the date of issue and maturity;
(3) the interest rate;
(4) the serial number or other identifying numbers;
(5) the manner in which the property is secured; and
(6) other information necessary to fully identify the bond, note, or other security.

Sec. 1163.002. ANNUAL ACCOUNT REQUIRED UNTIL ESTATE CLOSED.
(a) A guardian of the estate shall file an annual account conforming to the essential requirements of Section 1163.001 regarding changes in the estate assets occurring since the date the most recent previous account was filed.

(b) The annual account must be filed in a manner that allows the court or an interested person to ascertain the true condition of the estate, with respect to money, securities, and other property, by adding to the balances forwarded from the most recent previous account the amounts received during the period covered by the account and subtracting the disbursements made during that period.

(c) The description of property sufficiently described in an inventory or previous account may be made in the annual account by reference to the property.

Sec. 1163.003. SUPPORTING VOUCHERS AND OTHER DOCUMENTS ATTACHED TO ACCOUNT.
(a) The guardian of the estate shall attach to each annual account:
   (1) a voucher for each item of credit claimed in the account or, to support the item in the absence of the voucher, other evidence satisfactory to the court;
   (2) an official letter from the bank or other depository where the money on hand of the estate or ward is deposited that shows the amounts in general or special deposits; and
   (3) proof of the existence and possession of:
       (A) securities owned by the estate or shown by the account; and
       (B) other assets held by a depository subject to court order.

(b) An original voucher submitted to the court may on application be returned to the guardian after approval of the annual account.

Sec. 1163.004. METHOD OF PROOF FOR SECURITIES AND OTHER ASSETS.
(a) The proof required by Section 1163.003(a)(3) must be by:
   (1) an official letter from the bank or other depository where the securities or other assets are held for safekeeping, and if the depository is the guardian, the official letter must be signed by a representative of the depository other than the depository verifying the annual account;
   (2) a certificate of an authorized representative of a corporation that is surety on the guardian's bonds;
   (3) a certificate of the clerk or a deputy clerk of a court of record in this state; or
   (4) an affidavit of any other reputable person designated by the court on request of the guardian or other interested party.

(b) A certificate or affidavit described by Subsection (a) must:
   (1) state that the affiant has examined the assets that the guardian exhibited to the affiant as assets of the estate for which the annual account is made;
   (2) describe the assets by reference to the account or in another manner that sufficiently identifies the assets exhibited; and
   (3) state the time and the place the assets were exhibited.
(c) Instead of attaching a certificate or an affidavit, the guardian may exhibit the securities to the judge of the court, who shall endorse on the annual account, or include in the judge's order with respect to the account, a statement that the securities shown to the judge as on hand were exhibited to the judge and that the securities were the same as those shown in the account, or note any variance. If the securities are exhibited at a location other than where the securities are deposited for safekeeping, that exhibit is at the guardian's own expense and risk.

(d) The judge of the court may require:
   (1) additional evidence of the existence and custody of the securities and other personal property as the judge considers proper; and
   (2) the guardian at any time to exhibit the securities to the judge or another person designated by the judge at the place where the securities are held for safekeeping.

Sec. 1163.005. VERIFICATION OF ACCOUNT AND STATEMENT REGARDING TAXES AND STATUS AS GUARDIAN.
(a) The guardian of the estate shall attach to an account the guardian's affidavit stating:
   (1) that the account contains a correct and complete statement of the matters to which the account relates;
   (2) that the guardian has paid the bond premium for the next accounting period;
   (3) that the guardian has filed all tax returns of the ward due during the accounting period;
   (4) that the guardian has paid all taxes the ward owed during the accounting period, the amount of the taxes, the date the guardian paid the taxes, and the name of the governmental entity to which the guardian paid the taxes; and
   (5) if the guardian is a private professional guardian, a guardianship program, or the Department of Aging and Disability Services, whether the guardian or an individual certified under Subchapter C, Chapter 111, Government Code, who is providing guardianship services to the ward and who is swearing to the account on the guardian's behalf, is or has been the subject of an investigation conducted by the Guardianship Certification Board during the accounting period.

(b) If on the filing of the account the guardian of the estate has failed on the ward's behalf to file a tax return or pay taxes due, the guardian shall attach to the account a description of the taxes and the reasons for the guardian's failure to file the return or pay the taxes.

Sec. 1163.006. WAIVER OF ACCOUNT FILING.
If the ward's estate produces negligible or fixed income, the court may waive the filing of annual accounts and may permit the guardian to:
   (1) receive all estate income and apply the income to the support, maintenance, and education of the ward; and
   (2) account to the court for the estate income and corpus when the estate must be closed.
Sec. 201.101.  DEFINITIONS.
In this subchapter:
(1) "Financial institution" means:
   (A) a bank as defined for any purpose by Section 201.002(a)(4), whether chartered under the laws of this state, another state, the United States, or another country, including a state savings bank;
   (B) a savings and loan association chartered under Chapter 62 or similar laws of another state;
   (C) a federal savings and loan association, federal savings bank, or federal credit union;
   (D) a credit union chartered under Chapter 122 or similar laws of another state; or
   (E) a trust company chartered under the laws of this state or another state.
(2) "Out-of-state financial institution" means a financial institution that:
   (A) is not chartered under the laws of this state; and
   (B) has its main or principal office in another state or country.
(3) "Texas financial institution" means a financial institution that:
   (A) is chartered under the laws of this state or under federal law; and
   (B) has its main or principal office in this state.
APPENDIX C

TEXAS GUARDIANSHIP MANUAL

Forms 11-1 to 11-18
[Name of guardian], Applicant, guardian of the estate of [name of ward], files this Application to Create Management Trust for Benefit of Ward under chapter 1301 of the Texas Estates Code and shows the following in support:

Describe the source of the trust estate. The following is an example.

The [designation] Court of [county] County, Texas, is about to enter a judgment in Cause No. [number], styled “[style of case],” in which [name of ward], Ward, will be awarded the sum of $[amount].

Continue with the following.

Applicant is the guardian of the estate of Ward. Applicant believes that it would be in the best interests of Ward if the money awarded were held in a management trust for the benefit of Ward according to chapter 1301 of the Texas Estates Code.

Applicant has requested that [name of proposed trustee], Proposed Trustee, of [city], Texas, be permitted to act as trustee of this trust if the Court agrees that such a trust should be created. Applicant understands that Proposed Trustee has agreed to act as trustee. Proposed Trustee is a trust company having trust powers in the state of Texas and is therefore qualified to serve as trustee of a trust created according to chapter 1301 of the Texas Estates Code.

Applicant and Proposed Trustee have agreed on the terms of a proposed trust agreement that complies with the provisions of chapter 1301 of the Texas Estates Code and that accompanies this application as Exhibit [exhibit number/letter].

Applicant prays that the Court create a management trust for the benefit of Ward under the terms of chapter 1301 of the Texas Estates Code, that Proposed Trustee be appointed the trustee of the
trust, and that approval be given for the payment from the trust of reasonable fees to Proposed Trustee
for its services as trustee under the terms of the trust agreement, which accompanies this application.
Applicant prays for all further relief to which Applicant may be entitled.

Respectfully submitted,

____________________________________
[Name]
Attorney for Applicant
State Bar No.: [State Bar No.]
[E-mail address] [E-mail address]
[Address] [Address]
[Telephone] [Telephone]
[Telex copier] [Telex copier]

Attach exhibit(s).
Form 11-2

Management Trust

This agreement establishes the terms of a management trust created for the benefit of [name of beneficiary], Beneficiary, in accordance with the order of the [designation] Court of [county] County, Texas, under the authority of chapter 1301 of the Texas Estates Code.

1. **Trustee.** The trustee of the trust will be [name of trustee], Trustee. Trustee’s address is [address, city, county] County, Texas. On receipt of the funds constituting the corpus of the Trust, Trustee’s duties will begin in accordance with the terms of the trust. No bond or other security is required of Trustee or any successor trustee. However, Trustee currently maintains a financial institution bond in the amount of $[amount]. Trustee hereby agrees to maintain that bond or a similar bond subject to the reasonable commercial availability of such bonds. Trustee agrees to notify the Court within five days of learning that a bond is no longer available.

2. **Beneficiary.** The sole beneficiary of the trust is Beneficiary, who was born on [date of birth]. Beneficiary currently resides at [address, city, county] County, Texas.

3. **Trust Estate.** The trust will be funded with cash in the sum of $[amount] [describe funding, e.g., which will be awarded to the trust on behalf of Beneficiary as a result of a judgment in Cause No. [number], styled “[style of case],” in the [designation] Court of [county] County, Texas]. This money will constitute the initial principal of the trust, which, together with all other properties acquired by the trust and all income therefrom, will constitute the trust estate of the trust.

Modify the following paragraph if the trust is to be a “special needs” trust to include “special needs” provisions and to eliminate references to “health, education, support, or maintenance.” See section 11.3:6 and form 11-3 for the special needs provision.

4. **Distributions from the Trust.** Trustee will pay to or apply for the benefit of Beneficiary such amounts out of the net income and principal (if income is insufficient) of the trust as are in the sole discretion of Trustee reasonably necessary to provide for the health, education, support, or maintenance of Beneficiary, subject to any applicable Texas Estates Code provisions. Any income not distributed will be added to the principal of the trust.
In making any discretionary payments to Beneficiary, Trustee will consider (a) the standard of living to which Beneficiary was accustomed before the creation of the trust, (b) any known resources of Beneficiary, (c) the ability of any person who is legally obligated to support Beneficiary to do so, and (d) any present or future Texas Estates Code provisions governing the use and expenditure of funds held in management trusts.

Trustee may make any distribution required or permitted under the trust, without the intervention of any guardian or other legal representative, in any of the following ways: (a) to the legal or natural guardian of Beneficiary or to any person who has physical custody of Beneficiary; (b) to any person furnishing care, education, support, or maintenance to Beneficiary; or (c) by using the distribution directly for the benefit of Beneficiary.

No distribution from the trust may be made to or for the benefit of Beneficiary to satisfy any obligation if that obligation would otherwise be met from any federal or state assistance program if the trust had not been created. Trustee will not be responsible for making such a determination nor will Trustee be held liable for any distribution made in good faith that results in the loss of any federal or state assistance or for any distribution made pursuant to an order of any state agency requiring distribution for the benefit of Beneficiary.

Trustee is specifically authorized to pay accounting fees for preparation of Beneficiary’s personal income tax return and to pay any income tax owed by Beneficiary or the trust that is attributable to income generated by the trust.

Note: If the beneficiary is a minor, the trust must terminate when the beneficiary is twenty-five years old. Tex. Estates Code § 1301.203(a). However, some courts will not permit a chapter 1301 trust to extend beyond the ward’s eighteenth birthday.

5. **Termination.** The trust will terminate when [Beneficiary turns [age]/the Court determines Beneficiary to be no longer incapacitated or on the death of Beneficiary]. On termination, Trustee will pay all of the remaining trust estate of the Trust to Beneficiary, free of any further trust or, if Beneficiary is then deceased, to the personal representative of Beneficiary’s estate.

6. **Revocability.** This trust may not be amended, altered, or revoked by Beneficiary or any guardian or other legal representative of Beneficiary but remains subject to amendment, modification, or revocation by the Court at any time before the termination of the Trust.
7. **Spendthrift Provision.** Before the actual receipt of any distribution of any portion of the trust estate by Beneficiary, no property (whether income or principal) of the trust will be subject to anticipation or assignment by Beneficiary or to attachment by or the interference or control of any creditor or assignee of Beneficiary or be taken or reached by any legal or equitable process in satisfaction of any debt or liability of Beneficiary. Any attempted transfer or encumbrance of any interest in the trust estate by Beneficiary before its actual distribution will be void. In addition to being applicable to Beneficiary, this paragraph also applies to anyone other than Beneficiary who may be entitled to any portion of the trust estate on termination of the trust.

8. **Trustee’s Investment Authority.** Trustee will invest the trust estate in accordance with the standards in chapter 113 of title nine of the Texas Property Code as amended or with any subsequent applicable law. Trustee may also invest all or any part of the trust estate in a common trust fund now or hereafter established by Trustee pursuant to the Texas Trust Code. The investments must be in federally insured, interest-bearing time or deposit accounts or obligations backed by the United States government or its agencies or instrumentalities or in mutual funds composed primarily of securities issued by the United States government or its agencies or instrumentalities and managed by investment management organizations having in excess of $10 billion in assets under management.

9. **Trustee’s Compensation and Expenses.** Trustee will be entitled to be paid a fair and reasonable compensation for its services out of the trust assets, either annually, quarterly, or monthly, at its option. Compensation will be in accordance with customary and prevailing charges for similar services charged by corporate fiduciaries in [city, county] County, Texas and in compliance with the existing guardianship compensation statutes. Trustee’s compensation will not exceed Trustee’s then-published fee schedule. Trustee will be entitled to recover from the trust all reasonable expenses incurred by Trustee in administration of the trust. Trustee’s initial fee and expense schedule has been attached to this trust agreement and approved by the Court at the inception of the trust, but the Court will review all trustee fees and expenses incurred and paid annually and will consider such paid fees in light of the then-prevailing charges for similar services by corporate fiduciaries in [city, county] County, Texas. The Court may, on its own motion or at the request of Trustee or any other party interested in the welfare of Beneficiary, take any action it deems proper with respect to such fees and expenses.

Trustee’s fee schedule attached to this trust agreement constitutes the basis for Trustee’s compensation, subject only to review by the Court on an annual basis.
10. Administrative Provisions. In the administration of the trust, Trustee will be authorized and empowered—

a. to exercise all the powers now or hereafter granted to trustees of express trusts by the Texas Trust Code or any corresponding statutes, except that in any instance in which the Texas Trust Code, the provisions applicable to management trusts created under the Texas Estates Code, or other statutory provision may conflict with the express provisions of this trust agreement, the provisions of this trust agreement will control; and

b. to adjust, arbitrate, compromise, abandon, sue on, defend, or otherwise deal with and settle all claims in favor of or against the trust and to engage and retain attorneys or accountants at any time reasonably necessary to provide for the prudent management and preservation of the trust.

11. Miscellaneous. The trust also will be held and administered under the following terms and conditions:

a. The Trust will be governed in all respects by the laws of the state of Texas; jurisdiction and venue will lie in Texas in all matters involving the trust and those persons acting in connection with the trust.

b. Trustee will keep account books for the trust and all transactions involving the Trust and will furnish Beneficiary, or the person having the care and custody of Beneficiary if Beneficiary is then under a legal disability, statements at least quarterly showing receipts and disbursements of income and corpus of the trust and a list of assets held by the trust. Trustee will prepare and file with the Court regular annual accounts and, on the termination of the trust, a final account. All accounts will be prepared and filed in the same manner and form required of a guardian under title 3 of the Texas Estates Code. Trustee will provide copies of all accounts to any then-serving guardian of Beneficiary’s person and any then-serving guardian of Beneficiary’s estate. All accounts are subject to court review and approval in the same manner as provided in the Texas Estates Code. Trustee will not be responsible or liable to Beneficiary or any other person on account of any actions that Trustee may take or fail to take in Trustee’s good-faith reliance on any order or proceeding of the Court.
c. No person or entity dealing with Trustee under the trust will be obligated to see to the application of any money or property paid or delivered to Trustee, and no such person or entity will be obligated to inquire into the expediency or propriety of any transaction or the authority of Trustee to enter into and consummate any such transaction on terms Trustee may deem reasonably appropriate.

d. Trustee may not resign as trustee of the trust, nor may another trustee be substituted in place of Trustee, without receiving prior authority from the Court to do so. If the trusteeship should become vacant, or on Trustee’s submission of an application to resign, the power to appoint a successor will be exercisable by the Court alone.

e. The headings in this trust agreement are for convenience only and do not define or limit the scope or intent of the provisions to which they refer.

f. If any portion of this trust agreement is contrary to any applicable law or to the applicable rules and regulations of any authority regulating the activities of Trustee, the conflicting provision will be deemed deleted, and a provision as nearly alike in tenor, effect, and reading as will comply with such laws, rules, and regulations will be substituted in its place

12. **Inception of the Trust.** This trust becomes effective on the entry of the order to which this trust agreement is attached and the transfer of the above-described money to Trustee.

SIGNED on [date].

[Name and title of representative]
[Name of entity]

Trustee

The form and content of this trust instrument are hereby approved.

[Name of guardian]
Guardian

This instrument was acknowledged before me on [date] by [name of representative], as [capacity] of [name of trustee] as trustee, a state trust corporation, on behalf of the corporation.

Notary Public, State of Texas
Form 11-3

The following special needs trust provisions should be included as terms of the standard management trust (see form 11-2) in order for the trust to qualify as a special needs trust under 42 U.S.C. § 1396p(d)(4)(A).

Special Needs Trust Termination Provisions

This Trust shall terminate on the death of [name of beneficiary], Beneficiary, or on a determination of capacity by the court, at which point Trustee, [name of trustee], shall distribute and deliver the remaining principal and undistributed income, free of Trust, as provided in the trust.

1. Payment of Estate Taxes and Administration Expenses. If termination has occurred due to Beneficiary’s death, Trustee is authorized to pay all estate, inheritance, or other similar taxes which may be imposed on Beneficiary’s estate due to the death of Beneficiary. Trustee is authorized to pay reasonable administration expenses associated with the administration of the trust estate, such as an accounting of the trust to a court, completion and filing of documents, or other required action associated with termination and wrapping up the trust.

2. Reimbursement for State Medical Assistance Programs. Pursuant to 42 U.S.C. §1396p(d)(4)(A), the state of Texas or any other state that has made expenditures on Beneficiary’s behalf shall receive all amounts remaining in the Trust on Beneficiary’s death up to an amount equal to the total medical assistance paid on Beneficiary’s behalf under a state plan administered pursuant to 42 U.S.C., chapter 7, subchapter XIX.

3. Payment of Debts, Funeral Expenses, and Expenses of Last Illness. After the satisfaction of any reimbursement to the state of Texas or any other state from which Beneficiary has received medical assistance payment, if termination has occurred due to Beneficiary’s death, Trustee is authorized to pay any expenses of Beneficiary’s last illness, funeral and burial costs, and enforceable debts.

4. Distribution of Residue. Subsequently, after the state has been reimbursed for the above noted expenditures, Trustee shall distribute and deliver the remaining principal and undistributed income, free of Trust, to Beneficiary if Beneficiary is still living. If Beneficiary is no longer living at the termination of the Trust, Trustee shall distribute the amounts remaining in the Trust to the representative of Beneficiary’s estate.

5. Distribution of Income and Principal. Trustee, [name of trustee], shall pay funds for the benefit of [name of beneficiary], Beneficiary, for [his/her] lifetime, subject to the conditions provided below. Payments will be made from the income or principal, up to and including the whole amount, as Trustee, in
Trustee’s sole and complete discretion, may from time to time deem necessary or advisable for the satisfaction of Beneficiary’s supplemental needs as defined in this Trust. Any income not distributed shall be accumulated and added to the principal. As used in this Trust, “supplemental needs” refer to the requisites for maintaining Beneficiary’s good health, safety, and welfare when, in the discretion of Trustee, such requisites are not being provided by any public agency, local or county agency, office or department of the state of Texas, of any other state, or of the United States (a “governmental agency”). Distribution shall be limited so that Beneficiary is not disqualified from receiving public benefits to which [he/she] is otherwise entitled, and this Trust shall be administered so as to SUPPLEMENT AND NOT SUPPLANT such benefits. Notwithstanding any provision in this Trust, Trustee may make distributions that would reduce public benefits without terminating them completely. For example, Trustee may provide food and shelter to Beneficiary when he is eligible for Supplemental Security Income in exchange for a reduction of benefits under the “one-third reduction rule,” when Trustee in its uncontrolled discretion determines such distributions to be in Beneficiary’s best interests. In making distributions, Trustee shall take into consideration applicable resource and income limitations of any public assistance programs for which Beneficiary is eligible when determining whether or not to make any discretionary distributions. Further, and not withstanding any provision in this Trust, Trustee may in its sole discretion, make distributions that would terminate one or more public benefits in the event Trustee determines that such a result is in the best interest of Beneficiary. Trustee is further authorized to make distributions to Beneficiary from the Trust estate without consideration as to whether such distributions would be considered a cost associated with a normal parental obligation, if the distribution is determined by Trustee to be in the best interest of Beneficiary.

6. Disbursements to Be Supplemental. This Trust is created expressly for Beneficiary’s extra and supplemental care, maintenance, support, and education, in addition to the benefits [he/she] otherwise receives or may receive, as a result of [his/her] disability from any governmental agency or from any other private agency that provides services or benefits to persons with situations similar to Beneficiary’s situation. It is [name of applicant]’s, Applicant, express purpose that this Trust be used only to supplement other benefits received by Beneficiary. In making distributions, Trustee shall take into consideration applicable resource and income limitations of any public assistance programs for which Beneficiary is a recipient when determining whether to make any discretionary distributions. This Trust is primarily for the benefit of Beneficiary, and the rights of any remaindermen shall be of secondary importance. Trustee shall not be held accountable to any remainderman if part or all of the principal shall be depleted as a result of distributions in accordance with the terms of the Trust. Any good faith
determination made by Trustee as to the manner in which or extent to which the powers granted by this Trust shall be exercised shall be binding and conclusive on all persons who might at any time have or claim any interest in the Trust property.

7. **Other Assistance.** As long as Beneficiary is unable to maintain and support [himself/herself] independently, Trustee shall ask that a legal guardian or other legal representative or conservator, as appropriate, seek support and maintenance for [him/her] from all available public resources, including, but not limited to, Supplemental Security Income, Social Security Disability Insurance benefits, and Medicaid and Medicaid waiver programs. It is acknowledged that Trustee is neither licensed nor skilled in the field of social services and/or governmental assistance programs. Beneficiary’s legal guardian or other legal representative, if any, shall be responsible for identifying programs that may be of social, financial, developmental, or other assistance to Beneficiary, including seeking the assistance of federal, state, and local agencies that have been established to help the handicapped or disabled and other similar resources. Trustee is authorized to cooperate with and may assist Beneficiary, [his/her] legal guardian, or other legal representative, if any, but shall have no duty or responsibility to determine which programs are available to Beneficiary. Trustee shall not, in any event, be liable to Beneficiary or any other party with respect to any aspect of Beneficiary’s initial eligibility for federal, state, or local public assistance benefits or programs, including, but not limited to, the failure to identify each and every program or resource that might be available to Beneficiary on account of any handicap or disability.

8. **Not to Supplant Public Aid.** It is Applicant’s further intent that no part of the corpus of this Trust shall be used to supplant or replace public assistance benefits of any governmental agency or governmental program (“public assistance benefits”) that serve persons with the same or similar physical and/or mental condition as Beneficiary. In the event Trustee is requested by any department or agency, during Beneficiary’s lifetime, to release principal or income of the Trust to or on behalf of [him/her] to pay for equipment, medication, or services that other organizations or agencies are authorized to provide, or in the event Trustee is requested by any department or agency administering such benefits to petition the Court or any other administrative agency for the release of Trust principal or income for this purpose, Trustee shall deny such request. Further, Trustee is directed to defend any contest or other attack of any nature of the Trust at the expense of the Trust estate.

9. **Prepayment of Allowable Expenses.** Subject to the terms and conditions of this Trust, it is not necessary that Beneficiary or [his/her] legal guardian or other legal representative actually pay an allowable expense before requesting payment from Trustee. Beneficiary or [his/her] legal guardian or other legal representative may direct suppliers of allowable goods and services to apply directly to
Trustee for payment. Trustee is authorized to make payments from the Trust directly to the providers only to the extent that the distribution is authorized by the terms of this Trust.

10. *Denial of Distribution.* If Trustee denies a request for distribution in whole or in part, Trustee shall provide a written notice of the decision to Beneficiary and [his/her] legal guardian or other legal representative within a reasonable period of time. The period of time for notice is not to exceed thirty days after the request is made, unless special circumstances require an extension of time for processing the request for distributions. If an extension of time is required, written notice of the extension shall be furnished to Beneficiary and his legal guardian or other legal representative before the termination of the initial thirty-day period. In no event shall an extension exceed a period of fifteen days from the end of the initial period unless it is by order of a court of competent jurisdiction. The extension notice shall indicate the special circumstances requiring an extension of time and the date on which the Trustee expects to render a decision.
Form 11-4

Order Creating Management Trust for Benefit of [name of ward]

On [date] the Court considered the application of [name of guardian], the guardian of the estate of [name of ward], Ward, requesting that the Court establish a management trust for Ward under chapter 1301 of the Texas Estates Code. The Court considered the evidence presented and the argument of counsel and reviewed the terms of the trust agreement attached to this Order as Exhibit [exhibit number/letter] and hereby finds that Ward is an incapacitated person; the trust is in the best interests of Ward and should be created under the authority of chapter 1301 of the Texas Estates Code; [name of trustee], Trustee, the proposed trustee of the Trust, is a trust company having trust powers in Texas and therefore is qualified to serve as trustee of a trust created under chapter 1301 of the Texas Estates Code; Trustee on receipt of the [include if applicable: settlement proceeds and other] assets of Ward’s estate will assume the full responsibility, liability, and expense of making distributions, trust investments, and accounts for all trust assets and all receipts and disbursements of the trust; and Trustee should be allowed reasonable compensation for its services as trustee.

Include the following if applicable.

IT IS THEREFORE ORDERED that any funds awarded to [name of ward] by any judgment or order in Cause No. [number], styled “[style of case],” in the [designation] Court of [county] County, Texas, will be held in trust for the benefit of [name of ward], according to chapter 1301 of the Texas Estates Code and the terms of the trust agreement.

IT IS [FURTHER/THEREFORE] ORDERED that [name of trustee] of [city], Texas, is hereby appointed the trustee of the trust created by the trust agreement and, on acceptance by the trustee of the trust, all sums awarded to [name of ward] will be paid to [name of trustee] for the benefit of [name of ward].

IT IS FURTHER ORDERED that [name of guardian] will prepare and file with this Court, for its review and approval, a final account as guardian of [name of ward]’s estate, and when the final account is approved, the guardianship of [name of ward]’s estate will be closed, but this cause will be
retained on the Court’s docket for compliance with the provisions of chapter 1301 of the Texas Estates Code, including annual accounts and trustee compensation, until closed by order of this Court.

IT IS FURTHER ORDERED that approval is hereby granted to [name of trustee] to charge a fee for its trust services at the rates and in the manner provided in the fee schedule attached to the trust agreement, these being reasonable fees as provided under subchapter A of chapter 1155 of the Texas Estates Code; however, these fees are subject to the annual review and approval of the Court.

IT IS FURTHER ORDERED that [name of trustee] will prepare and file with this Court for its review and approval, an annual account of assets and transactions in the trust, with a copy of the annual account to be provided to the guardian of the person of [name of ward].

SIGNED on

____________________________________
JUDGE PRESIDING

APPROVED AS TO FORM:

____________________________________
[Name]
Attorney for Applicant
State Bar No.: [E-mail address]
[Address] [Telephone] [Telemcoper]

Include if applicable.

____________________________________
[Name]
Attorney Ad Litem
State Bar No.: [E-mail address]
[Address] [Telephone] [Telemcoper]

Attach exhibit(s).
Form 11-5

First Annual Account of Trustee of Management Trust

[Name of trustee], Trustee, court-appointed trustee of the management trust created for the sole benefit of [name of beneficiary], Beneficiary, presents this verified First Annual Account of Trustee of Management Trust, from [date] through [date], pursuant to section 1301.154 of the Texas Estates Code.

1. Guardianship Estate. [Name of guardian], Guardian, guardian of the estate of [name of ward], was appointed guardian of the estate on [date]. Guardian's final account was approved by this Court on [date].

2. Trust Beneficiary. The trust beneficiary is [name of beneficiary]. [He/She] was born on [date of birth].

3. The Trust. The trust was established by order of this Court dated [date]. It was funded with $[amount] from [describe source of funds, e.g., funds awarded to Beneficiary and held in various guardianship accounts belonging to the guardianship estate].

4. Changes in Property of the Trust. No changes to the property of the trust occurred other than those listed in paragraph 11. of this account and more fully described in the statement of account activity, detailing all receipts and disbursements for the accounting period. The statement of account activity will be provided to the Court under separate cover.

5. Claims Against the Trust. [There were no claims presented to Trustee during the accounting period. / The following claim[s] [was/were] presented to Trustee during the accounting period and the following action[s] [was/were] taken: [list claims and actions taken].]

6. Property of the Trust. All property belonging to the trust that came into the possession or knowledge of Trustee is listed in paragraph 11. of this account and is more fully described in the statement of account activity.

7. Receipts. A list of all revenue and income received by Trustee for the benefit of Beneficiary during the period covered by the annual account is set out on the statement of account activity and summarized in paragraph 11. of this account.

8. Disbursements. Disbursements made and expenses incurred on behalf of and for the benefit of Beneficiary are listed in paragraph 11. of this account and more fully described in the statement of account activity.

9. Description of Property Being Administered. No property, other than cash assets and mutual funds that remain in the trust, is subject to the control and management of Trustee. A complete
description of all assets subject to the control and management of Trustee appears on the schedule of assets, which is attached as Exhibit [exhibit number/letter] and incorporated by reference. Exhibit [exhibit number/letter], a verification of funds on deposit, states the total principal under management as of [date] in the amount of $[amount].

10. **Trustee Fees.** The fee schedule for this accounting period was previously approved by the Court. The fee schedule was attached to the trust agreement at the time of approval. The fees taken for this accounting period are $[amount] and are set out in detail in Exhibit [exhibit number/letter]. Fees were calculated using the fee schedule attached to the original trust agreement and attached as Exhibit [exhibit number/letter].

11. **Summary of Receipts and Disbursements.**

   Beginning cash as received on [date] from [payor]: $[amount]

   Receipts
   
   **[Name of payor]:** $[amount]
   
   Total receipts: $[amount]
   
   Total beginning cash and receipts: $[amount]

   Disbursements
   
   **[Name of payee]:** $[amount]
   
   Total disbursements: $[amount]

   Recapitulation
   
   Beginning cash and receipts: $[amount]
   
   Unrealized capital [gain/loss]: $[amount]
   
   Less Disbursements: <$[amount]>
   
   Ending balance: $[amount]

12. **Total Value of Estate at End of Accounting Period.** The total value of the Trust as of [date] is $[amount], as evidenced by the verification of funds attached hereto as Exhibit [exhibit number/letter].

13. **Taxes.** A grantor letter has been furnished to Beneficiary regarding taxable income from this trust. The taxable income from this trust should be reported on Beneficiary’s individual income tax return (IRS Form 1040).
[Name of trustee] prays that citation and notice be issued as required by law unless waived, that the Court audit, settle, and approve this annual account, and that the Court enter such other orders as may be proper.

Respectfully submitted,

____________________________________
Trustee

[Name and title of representative]
[Name of entity]

[Name]
Attorney for Trustee
State Bar No.: [E-mail address]
[Address]
[Telephone]
[Telecopier]

Affidavit of Trustee

BEFORE ME, the undersigned authority on this day personally appeared [name], a trust officer of [name of trustee], known to me to be the person whose name is subscribed to the foregoing First Annual Account of Trustee of Management Trust and after being duly sworn by me, stated that the annual account is true, correct, and complete in every respect to the best of [his/her] knowledge, that no bond premium is due or owing, that all tax returns for the trust have been filed during the accounting period, and that all taxes owed during the accounting period on behalf of the trust have been paid.

____________________________________
[Name of affiant]

Signed under oath before me by [name], a trust officer of [name of trustee], on [date].

____________________________________
Notary Public, State of Texas

Attach exhibit(s).
Form 11-6

Order Approving Annual Account of Management Trust

On [date] the Court considered the annual account of [name of trustee], the trustee for the management trust in the above-entitled and -numbered guardianship proceeding, and after examining the annual account the Court finds that the annual account for the period [date] to [date] has been filed and exhibited for the time required by law, that this annual account appears to comply with the provisions of the Texas Estates Code, that no objections have been filed, and that this annual account should be approved as filed.

IT IS ORDERED that the annual account of the management trust of [name of beneficiary], an incapacitated person, is hereby approved.

IT IS FURTHER ORDERED that [name of trustee], as trustee, file its next annual account of this management trust covering the twelve-month period from [date] to [date] no later than [date].

SIGNED on

[Signature]

JUDGE PRESIDING
Form 11-7

Application for Leave to Resign as Trustee and for Appointment of Successor Trustee

[Name of applicant], Applicant, trustee of the estate of [name of beneficiary], Beneficiary, an incapacitated person, files this Application for Leave to Resign as Trustee and for Appointment of Successor Trustee, and shows the following in support:

1. Request to Resign. Applicant is the duly appointed, qualified, and acting trustee of Beneficiary. Applicant desires to resign as trustee and requests that the Court appoint [name of proposed successor trustee], Proposed Successor Trustee, as successor trustee pursuant to section 1301.155 of the Texas Estates Code.

2. Appointment of Successor Trustee. Applicant believes that it is in the best interests of Beneficiary to have a successor trustee appointed. It is no longer necessary for Applicant to serve as trustee because Beneficiary’s needs can be more adequately and economically served by Proposed Successor Trustee.

3. Beneficiary. Beneficiary is [a minor/an adult] [male/female] who is [years] years old, born [date of birth]. Beneficiary currently resides at [address, city, county] County, Texas. Beneficiary has previously been served with citation.

4. Present Trustee. On [date] this Court appointed Applicant as the trustee under chapter 1301 of the Texas Estates Code for the purpose of managing Beneficiary’s trust. Applicant wishes to resign as trustee.

5. Proposed Successor Trustee. Proposed Successor Trustee has its office at [address, city, county] County, Texas, and is a corporate fiduciary.

6. Venue. This Court has venue over these proceedings because the original guardianship was filed and created in this Court and the management trust was created by and is reviewed by this Court.

7. Need for Immediate Appointment of Successor Trustee and Continuation of Trust. Beneficiary is a person who is incapacitated to care for and manage [his/her] property and financial affairs and is without a legal guardian of [his/her] estate. There exists an immediate necessity for the appointment of a successor trustee to provide for the ongoing financial needs of Beneficiary and Beneficiary’s estate because [specify, e.g., there exist a considerable number of assets that need to be supervised and taxes that need to be paid].

8. Term of Trust. The terms of trust are set out in the attached Exhibit [exhibit number/letter], the original trust agreement approved by this Court on [date].
Applicant prays that [his/her] resignation be accepted and that [name of proposed successor trustee] be appointed successor trustee of [name of beneficiary], an incapacitated person, and for all further relief to which Applicant may be entitled.

Respectfully submitted,

____________________________________
[Name]  
Trustee

____________________________________
[Name]  
Successor Trustee

____________________________________
[Name]  
Attorney for Applicant
State Bar No.:  
[E-mail address]  
[Address]  
[Telephone]  
[Telexcopier]

Attach exhibit(s).

Certificate of Service

I certify that in accordance with the Texas Rules of Civil Procedure I served a true and correct copy of [title of document, e.g., Motion for Leave to Resign as Guardian] on the parties listed below. This service was made by [method of service, e.g., certified mail, properly addressed, return receipt requested, in a postpaid envelope deposited with the United States Postal Service].

List the name and address of each party or attorney served.

SIGNED on

____________________________________
[Name of attorney]
Form 11-8

Application to Appoint Successor Trustee of Management Trust

[Name of applicant], Applicant, files this Application to Appoint Successor Trustee of Management Trust of [name of beneficiary], Beneficiary, an incapacitated person, and shows the following in support:

1. **Beneficiary.** [Name of beneficiary] is [a minor/an adult] [male/female] who is [years] years old, born [date of birth]. Beneficiary currently resides at [address, city, county] County, Texas. Beneficiary has previously been served with citation.

2. **Prior Trustee.** On [date], [name of trustee] was appointed trustee of a management trust, and [name of guardian] was appointed as the permanent guardian of the person of Beneficiary. Trustee has indicated that it wishes to resign.

3. **Proposed Successor Trustee.** [Name of proposed successor trustee], Proposed Successor Trustee, has its offices at [address, city, county] County, Texas, and is a corporate fiduciary having trust powers in Texas. Proposed Successor Trustee desires to be appointed as the trustee of the existing management trust of Beneficiary, and Proposed Successor Trustee is eligible to act as a trustee for the trust.

4. **Venue.** This Court has venue over these proceedings because the original management trust was filed and created in this Court.

5. **Need for Immediate Appointment of Trustee and Continuation of Trust.** Beneficiary is a [minor/person who is incapacitated to care for and to manage [his/her] property and financial affairs] and is without a legal guardian of [his/her] estate. There exists an immediate necessity for the appointment of a successor trustee to provide for the ongoing needs of Beneficiary’s estate because [specify, e.g., there exist a considerable number of assets that need to be supervised and taxes that need to be paid].

If the beneficiary is a minor, the applicant should request that the trust continue until the beneficiary reaches a specified age, between 18 and 25, in accordance with the terms of the original trust agreement approved by the court.
6. *Term of Trust.* The requested term of this trust is [for such time as Beneficiary’s physical or medical condition necessitates the continued need for the management of Beneficiary’s estate/until Beneficiary turns [age]].

Applicant prays that [name of proposed successor trustee] be appointed successor trustee of the management trust of [name of beneficiary], an incapacitated person, and for all further relief to which Applicant may be entitled.

Respectfully submitted,

____________________________________
[Name]
Attorney for Applicant
State Bar No.: [E-mail address]
[Address]
[Telephone]
[Telecopier]
Form 11-9

Order Appointing Successor Trustee of Management Trust

On [date] the Court considered the application of [name of applicant] for appointment of successor trustee of the management trust of [name of beneficiary], Beneficiary, an incapacitated person. The Court has reviewed the application [to resign/indicating that the prior trustee is no longer willing to serve] and the documents filed with it and finds that an immediate need exists for the appointment of a successor trustee of the management trust established for Beneficiary. The Court finds that the allegations contained in the application appear to be true and that notice and citation [is not required/has been given in the manner and for the length of time required by law]. The Court makes the following findings of fact:

1. A continued necessity exists for a management trust over the estate of [name of beneficiary], an incapacitated person, that [name of proposed successor trustee] is not ineligible to serve, and that it is in Beneficiary’s best interests that [name of proposed successor trustee] be appointed as successor trustee over Beneficiary’s estate.

2. Beneficiary’s [rights/property/rights and property] will be protected by the appointment of a successor trustee.

3. The Court has venue under section 1023.001 of the Texas Estates Code, as well as subject matter jurisdiction.

IT IS THEREFORE ORDERED that [name of proposed successor trustee] is appointed as the successor trustee of the management trust for the benefit of [name of beneficiary], an incapacitated person.

IT IS FURTHER ORDERED that [name of prior trustee]’s resignation is accepted and it is ordered to file a final account of its actions as trustee not later than [date].
IT IS FURTHER ORDERED that [name of prior trustee], the former trustee, is ordered to immediately turn over to the successor trustee all assets contained in Beneficiary’s trust.

SIGNED on

___________________________________
JUDGE PRESIDING

APPROVED AS TO FORM:

___________________________________
[Name]
Attorney for Prior Trustee
State Bar No.: [E-mail address] [Address] [Telephone] [Telecopier]

___________________________________
[Name]
Attorney for Successor Trustee
State Bar No.: [E-mail address] [Address] [Telephone] [Telecopier]
Applicants, [name of guardian applicant] and [name of trustee applicant], make this Joint Application for Termination of Original Management Trust, Discharge of Trustee of Original Management Trust, Creation of Restated Management Trust, and Appointment of Trustee of Restated Management Trust, and show the following:

1. [Name of ward], Ward, an incapacitated person, is [a minor/an adult], age [age] as of the filing of this application. Ward has been adjudicated an incapacitated person by this Court and is the ward of this Court in the above-captioned cause.

2. Applicant [name of guardian applicant] is the guardian of the person of Ward. Ward currently resides at [address, city, county] County, Texas.
   
   By order dated [date], this Court created a management trust for Ward under chapter 1301 of the Texas Estates Code and appointed Applicant [name of trustee applicant] as trustee of the Original Management Trust.

3. The Original Management Trust was initially funded with [specify].

4. Applicant [name of trustee applicant] desires to be discharged as trustee of the Original Management Trust. Both applicants believe that it would be in the best interests of Ward for this Court to terminate the Original Management Trust, discharge [name of trustee applicant] as trustee, create a restated management trust in the stead of the Original Management Trust, and appoint a new trustee of the Restated Management Trust.

5. Applicant [name of trustee applicant] has asked [name of proposed successor trustee], Proposed Successor Trustee, to act as trustee of the Restated Management Trust if this Court agrees
that such a trust should be created. Applicant [name of trustee applicant] understands that Proposed Successor Trustee is willing to act as trustee of the Restated Management Trust.

6. Proposed Successor Trustee has agreed to the terms of the proposed Restated Management Trust. The proposed terms comply with the provisions of chapter 1301 of the Texas Estates Code. The proposed terms are set forth in the terms of the Restated Management Trust attached to and made a part of this application as Exhibit A.

7. Applicant [name of trustee applicant] has agreed to waive all its right to compensation and expense reimbursement as trustee. Applicant [name of guardian applicant] and Proposed Successor Trustee desire to release [name of trustee applicant] from all liabilities it may have with regard to its service as trustee of the Original Management Trust.

Applicants pray—

1. that this Court enter its order (a) creating the Restated Management Trust for Ward in accordance with chapter 1301 of the Texas Estates Code and the terms of the Restated Management Trust attached as Exhibit [exhibit number/letter], (b) designating [name of proposed successor trustee] as the trustee of that trust, and (c) directing Applicant [name of trustee applicant], as trustee of the Original Management Trust, to submit its final account to this Court;

2. that on this Court’s approval of [name of trustee applicant]’s final account the Court enter its order (a) confirming that [name of trustee applicant], as trustee of the Original Management Trust, has waived all its right to compensation and expense reimbursement as trustee and that [name of trustee applicant] will not receive any compensation or reimbursement and (b) directing [name of trustee applicant], as trustee of the Original Management Trust, to deliver all the remaining property of the Original Management Trust to Proposed Successor Trustee, to be held and disposed of in accordance with chapter 1301 of the Texas Estates Code and the attached terms of the Restated Management Trust; and

3. that on [name of trustee applicant]’s delivery of all the remaining property of the Original Management Trust to Successor Trustee and the Proposed Successor Trustee’s filing of its receipt of
same, the Court enter its order terminating the Original Management Trust and discharging [name of trustee applicant] as trustee of the Original Management Trust, and granting all further relief to which applicants may be entitled.

Respectfully submitted,

____________________________________

[Name of guardian applicant]
Applicant

____________________________________

[Name of trustee applicant]
Applicant

____________________________________

[Name]
Attorney for Applicants
State Bar No.: 
[E-mail address]
[Address]
[Telephone]
[Telecopier]

Attach exhibit(s).
Restated Management Trust

This instrument establishes and restates the terms of a management trust as authorized by chapter 1301 of the Texas Estates Code.

1. **Guardianship.** Cause No. [number], styled “[style of case],” has been pending before the [designation] Court of [county] County, Texas.

2. **Original Management Trust.** By order dated [date], the Court created a management trust for [name of beneficiary] pursuant to chapter 1301 of the Texas Estates Code and appointed [name of original trustee] of [city], Texas, as trustee of the Original Management Trust.

3. **Restated Management Trust.** By order dated [date], the Court created a restated management trust for [name of ward], Ward, pursuant to chapter 1301 of the Texas Estates Code to replace the Original Management Trust and directed [name of original trustee], Trustee, to deliver the assets of the Original Management Trust to the trustee of this Restated Management Trust (the Trust), who is named below.

4. **Beneficiary.** [Name of beneficiary], Beneficiary, an incapacitated person born on [date of birth], is the sole beneficiary of the Trust. Beneficiary is the ward in the above-described guardianship.

5. **Trustee Named.** [Name of trustee], Trustee, is the sole trustee of the Trust.

6. **Bond, Liability.** No bond or other security is required of Trustee. No guardian of Beneficiary’s estate or person or any surety on the bond of any guardian will be liable for an act or omission of Trustee.

7. **Resignation.** Trustee may not resign as trustee nor may another trustee be substituted in place of Trustee without receiving prior authority from the Court.

8. **Trust Estate.** The Trust will be funded with all the property remaining in the Original Management Trust. This property will constitute the initial principal of the Trust, which, together with all other property transferred to the Trust and all income therefrom, will constitute the trust estate of the Trust.

9. **General Distributions.** Trustee will pay to or apply for the benefit of Beneficiary as much of the income and principal of the Trust as may be reasonably necessary, in the sole discretion of Trustee, to provide for the health, education, support, or maintenance of Beneficiary and to comply with any mandatory provision of current or future law that may apply to management trusts created under chapter 1301 of the Texas Estates Code. Any income not distributed under this paragraph will be added to the principal of the Trust.
10. Additional Distributions. In addition, Trustee may pay to Beneficiary’s guardian or to any person having physical custody of Beneficiary such amounts of the principal of the Trust as may be reasonably appropriate, in the sole discretion of Trustee, to provide for the support of Beneficiary.

11. Distribution Considerations. In making any discretionary distributions Trustee will consider (a) the standard of living to which Beneficiary has been accustomed before the creation of the Trust, (b) any known resources of Beneficiary, (c) the ability of any person who is legally obligated to support Beneficiary to do so, (d) the ability of Beneficiary to earn funds for Beneficiary’s own support and maintenance except while obtaining an education, and (e) any law that may apply to management trusts created under chapter 1301 of the Texas Estates Code. This Trust is intended to safeguard the Trust estate [include if applicable:, which was created to replace the Medicaid programs that would normally provide for the Beneficiary’s lifetime care]. The creation and provision of the Trust, along with the continued supervision of the Court, is intended to guarantee Beneficiary the highest quality of life in the least restrictive environment. Accordingly, the provisions of the Trust relating to health, education, support, and maintenance will be broadly construed to the extent allowed under chapter 1301 of the Texas Estates Code.

12. Facility of Payment. Except as otherwise provided, Trustee may make any distribution required or permitted under this Trust, without the intervention of any guardian or other legal representative, in any of the following ways: (a) to Beneficiary directly, if appropriate, (b) to the natural or legal guardian of Beneficiary’s person, (c) to any person furnishing care, education, support, or maintenance to Beneficiary, or (d) by using any distribution directly for Beneficiary’s benefit.

13. Termination. The Trust will terminate on the death of Beneficiary or on the Court’s determination that a guardianship is not necessary and the Trust is no longer needed. If Beneficiary is living on termination of the trust, Trustee will pay all the then-remaining trust estate of the Trust to Beneficiary free of any other trust. If Beneficiary is deceased on termination of the Trust, Trustee will pay all the then-remaining trust estate of the Trust to the personal representative of Beneficiary’s estate, but only if Beneficiary’s Will is admitted to probate or a personal representative of Beneficiary’s estate qualifies within six months of Beneficiary’s death. If not, Trustee will pay all the then-remaining trust estate to Beneficiary’s heirs at law under sections 201.001 and 201.002 of the Texas Estates Code.
14. **Trust Amendment, Modification, or Revocation.** The Court may amend, modify, or revoke the Trust at any time before the date of the Trust’s termination. No other person, including Beneficiary, the guardian of Beneficiary’s person or estate, or other legal representative of Beneficiary, may amend, modify, or revoke the Trust.

15. **Spendthrift Provision.** To the fullest extent allowed by law (a) the Trust will be a spendthrift trust, (b) no property of the Trust will be subject to anticipation or assignment by Beneficiary, (c) no property of the Trust will be subject to attachment by or the interference or control of any creditor or assignee of Beneficiary or be taken or reached by any legal or equitable process in satisfaction of any debt or liability of Beneficiary except in accordance with the applicable provisions of the Texas Estates Code, (d) any attempted transfer or encumbrance of any interest in the trust estate of the Trust by Beneficiary before its actual distribution will be wholly void, and (e) no distribution from the Trust will be made to satisfy any obligation to Beneficiary if such obligation would otherwise be met from any federal or state assistance program if the Trust had not been created.

16. **Trustee’s Investment Authority.** Trustee will invest the trust estate in accordance with the standards set forth in chapter 113 of title nine of the Texas Property Code (or any subsequent applicable law). Trustee may also invest all or any part of the trust estate in one or more common trust funds or common mutual funds now or hereafter established by Trustee. To the maximum extent allowed by law, the Trustee’s investment authority will not be limited by chapter 1161 of the Texas Estates Code or any other provision of title three of the Texas Estates Code.

17. **Trustee’s Compensation and Expense Reimbursement.** Trustee is entitled to reimbursement for all necessary and reasonable expenses incurred by Trustee in performing any duty as trustee. Trustee is also entitled to fair and reasonable compensation determined in accordance with the then-customary and prevailing charges for similar services charged by corporate fiduciaries in [city, county] County, Texas, in compliance with the existing guardianship compensation statutes. Trustee’s compensation initially will be based on its current fee schedule, a copy of which is attached to this instrument. Trustee may receive its compensation (and reimburse itself for its expenses) on an annual, quarterly, or monthly basis, at Trustee’s election. Trustee’s fees are subject to annual review by the Court and review at any time on the Court’s own motion or at the instance of Trustee or any other party interested in the welfare of Beneficiary. On a hearing of the matter, the Court may take any action it deems proper with respect to such fees and expenses.
18. **Trustee Powers.** In the administration of the Trust, Trustee will have the following powers:

   a. To exercise all the powers now or hereafter granted to trustees of express trusts by the Texas Trust Code or any corresponding statute, except in any instance in which the Texas Trust Code or other statutory provisions may conflict with the express provisions of this instrument, or the provisions contained in Texas Estates Code chapter 1301, in which case the provisions of this instrument and the Texas Estates Code will control.

   b. To adjust, compromise, abandon, sue on, or defend and otherwise deal with and settle all claims in favor of or against the Trust and to engage and retain attorneys or accountants at any time reasonably necessary to provide for the prudent management and preservation of the Trust.

   c. To continue to act as trustee of the Trust regardless of any change of name of Trustee and regardless of any reorganization, merger, or consolidation of Trustee.

19. **Records, Annual and Final Account.** Trustee will keep account books for the Trust and all transactions involving the Trust. Trustee will prepare and file with the Court a regular annual account and, on the termination of the Trust, a final account. All accounts will be prepared and filed in the same manner and form required of a guardian under title three of the Texas Estates Code. Trustee will provide copies of all accounts to any then-serving guardian of Beneficiary’s person and any then-serving guardian of Beneficiary’s estate. All accounts are subject to court review and approval in the same manner required of accounts prepared by a guardian under title three of the Texas Estates Code.

20. **Third Parties Dealing with Trustee.** No person or entity dealing with Trustee will be obligated to see to the application of any property paid or delivered to Trustee, and no such person or entity will be obligated to inquire into the expediency or propriety of any transaction or the authority of Trustee to enter into and consummate the same on such terms as Trustee may deem reasonably appropriate.

21. **Headings.** The headings in this instrument are for convenience only and do not define or limit the scope or intent of the provisions to which they refer.

22. **Multiple Originals.** This instrument may be signed in multiple originals, any one of which will be deemed an original for all purposes.
23. *Inception of Trust.* The Trust will become effective on the last to occur of (a) the Court’s entry of its order creating this Trust, (b) the initial transfer of any property to Trustee, (c) Trustee’s acceptance of the Trust, evidenced by the signature below of the appropriate officer of Trustee, or (d) the filing of the original of this document with the county clerk in the guardianship proceeding.

SIGNED on

___________________________________

[Name of trustee]
Trustee

By: ________________________________

[Name]
[Title]

This instrument was acknowledged before me on [date] by [name of representative], as [capacity] of [name of trustee] as Trustee, a state trust corporation, on behalf of the corporation.

__________________________________

Notary Public, State of Texas

Include attachment(s).
Form 11-12

Order Creating Restated Management Trust and Directing Trustee
to File Final Account

On [date] the Court heard the Application for Termination of Original Management Trust, Discharge of Trustee of Original Management Trust, Creation of Restated Management Trust, and Appointment of Trustee of Restated Management Trust filed jointly by [name of guardian applicant] and [name of trustee applicant].

[Name of guardian applicant] is the guardian of the person of [name of ward], Ward, an incapacitated person. [Name of trustee applicant] is the serving trustee of a management trust created for Ward according to chapter 1301 of the Texas Estates Code by order of the Court dated [date].

The application requests the Court to (1) terminate the Original Management Trust, (2) discharge [name of trustee applicant] as trustee, (3) create a restated Management Trust in the stead of the Original Management Trust, and (4) appoint a new trustee of the Restated Management Trust.

The Court has considered the application and examined the terms of the Restated Management Trust filed with the application. The Court has considered the evidence presented and the arguments of counsel. There being no exceptions or objections to the application, the Court finds that it would be in the best interests of Ward to (1) terminate the Original Management Trust, (2) discharge [name of trustee applicant] as trustee, (3) create the Restated Management Trust in the stead of the Original Management Trust, and (4) appoint a new trustee of the Restated Management Trust.

IT IS THEREFORE ORDERED that the Restated Management Trust for [name of ward] is created pursuant to chapter 1301 of the Texas Estates Code and in accordance with the terms of the Restated Management Trust attached to and made a part of this order as Exhibit [exhibit number/letter].

IT IS FURTHER ORDERED that [name of successor trustee] is appointed sole trustee of the Restated Management Trust.
IT IS FURTHER ORDERED that the fee schedule of [name of successor trustee], Successor Trustee, attached to the trust agreement and presented to the Court is hereby approved for the first twelve-month period of the Restated Management Trust.

IT IS FURTHER ORDERED that [name of trustee applicant] file its final account as trustee of the Original Management Trust.

SIGNED on

___________________________________
JUDGE PRESIDING

APPROVED AS TO FORM:

___________________________________
[Name]
Attorney for Guardian
State Bar No.: [E-mail address]
[Address] [Telephone] [Telecopier]

___________________________________
[Name]
Attorney for Trustee
State Bar No.: [E-mail address]
[Address] [Telephone] [Telecopier]
Form 11-13

Final Account

[Name of trustee], Trustee, of [city], Texas, trustee of the management trust created for [name of ward], Ward, an incapacitated person, according to chapter 1301 of the Texas Estates Code, by order of this Court dated [date], respectfully files its Final Account of the Original Management Trust.

1. On [date] this Court created the Restated Management Trust for Ward to replace the Original Management Trust, and there is therefore no further need for the Original Management Trust. Trustee has properly administered the Original Management Trust. Trustee respectfully presents this verified final account of its trusteeship covering the period from inception of [date] through [date].

2. No claims against Ward’s estate were presented to Trustee within the period covered by this final account, no claims have been allowed, paid, or rejected by Trustee, and none have been sued on.

3. Trustee represents that within its knowledge there are no claims due or owing Ward’s estate.

4. No changes in the property belonging to Ward’s estate, as described in the account for final settlement filed by the guardian of Ward’s estate on [date] and approved by order of the Court dated [date] other than changes in cash listed in paragraph 6. below, have come to Trustee’s knowledge.

5. No property belonging to Ward’s estate has come into Trustee’s possession that was not included in the guardian’s final account.

6. A complete account of receipts and disbursements for the period [date] through [date] and the sources and nature thereof is as follows: [specify].
Cash on hand $[amount]

Receipts
  Total receipts: $[amount]
  Total beginning cash and receipts: $[amount]

Disbursements
  Total disbursements: $[amount]

Recapitulation

Beginning cash and receipts $[amount]
Less Disbursements <$[amount]>
Cash on hand $[amount]

7. A complete description of the property of Ward’s estate being administered as of [date] is as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
</tr>
</tbody>
</table>

8. During the period covered by this account, Trustee was not required to file any tax returns on behalf of Ward, and no taxes were required to be paid.

9. During the course of its administration of the Original Management Trust, Trustee disbursed trust funds for the health, education, support, or maintenance of Ward according to terms of the Original Management Trust, and ratification for these payments is respectfully requested. These disbursements were reasonable and in the best interests of Ward. A complete description of the disbursements is as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Date Paid</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
10. The remaining assets of the Original Management Trust should be delivered to [name of successor trustee] as trustee of the Restated Management Trust.

11. Trustee hereby waives all commissions and other compensation that it might otherwise be entitled to receive from the property of the Original Management Trust.

Trustee prays that after due citation the Court hear and approve its Final Account for the period ending [date], that the Court ratify the disbursements listed in paragraph 9. in the total amount of $[amount], and for all further relief to which Trustee may be entitled.

Respectfully submitted,

____________________________________
[Name of trustee]
[Title]

APPROVED AS TO FORM:

____________________________________
[Name]
Attorney for Guardian
State Bar No.: [E-mail address]
[Address]
[Telephone]
[Teletyper]

[Name of affiant] appeared in person before me today and stated under oath: “I am the representative of Trustee in the foregoing final account and exhibits. I have personal knowledge of the facts stated in it, and they are true, complete, and correct.”

____________________________________
[Name of affiant]

SIGNED under oath before me on

____________________________________
Notary Public, State of Texas
Form 11-14
Order Approving Final Account and Directing Funding of Restated Management Trust

On [date] the Court heard the Application for Termination of Original Management Trust, Discharge of Trustee of Original Management Trust, Creation of Restated Management Trust, and Appointment of Trustee of Restated Management Trust filed jointly by [name of guardian applicant] and [name of trustee applicant] regarding a management trust created by order of the Court dated [date] for [name of ward], Ward, an incapacitated person, pursuant to chapter 1301 of the Texas Estates Code.

By order dated [date] the Court created a management trust for Ward pursuant to chapter 1301 of the Texas Estates Code, appointed [name of successor trustee] as sole trustee of the Restated Management Trust, and directed [name of trustee applicant] to file its Final Account as trustee of the Original Management Trust.

On [date] the Court further considered the application and considered the Final Account filed by [name of trustee applicant]. The Court has examined the Final Account and the vouchers accompanying it, has heard all evidence in support of and against the Final Account, and has duly audited and settled the Final Account. The Court has reviewed the waiver of notice of hearing on the Final Account filed by [name of guardian applicant], guardian of the person of Ward. The Court has considered the evidence presented and the argument of counsel. There being no exceptions or objections to the Final Account or the application, the Court makes the following findings:

1. Citation has been served in the manner required by law.
2. It is in the best interests of Ward to transfer to the Restated Management Trust all the property now being administered by [name of trustee applicant] as trustee of the Original Management Trust.
3. [Name of trustee applicant] has administered the Original Management Trust in accordance with the Texas Estates Code and the orders of this Court.
4. All expenditures for Ward listed in the Final Account were reasonable and their payment should be ratified.
5. [Name of trustee applicant] has waived all commissions and other compensation it would otherwise be entitled to receive from the Original Management Trust.

IT IS THEREFORE ORDERED that the Final Account for the period ending [date], filed with this Court by [name of trustee applicant], is hereby approved.

IT IS FURTHER ORDERED that all expenditures made by [name of trustee applicant] during the accounting period listed in the Final Account are hereby ratified and approved.

IT IS FURTHER ORDERED that [name of trustee applicant] receive no commission or other compensation or any reimbursement for its attorney’s fees incurred with regard to this matter.

IT IS FURTHER ORDERED that [name of trustee applicant] deliver all the remaining funds and other property in the trust estate (including any income or interest), as set forth in the Final Account, to [name of successor trustee] to be held and disposed of for [name of ward] pursuant to chapter 1301 of the Texas Estates Code and in accordance with the terms of Restated Management Trust previously approved by the Court.

IT IS FURTHER ORDERED that [name of successor trustee] pay from the assets of the Restated Management Trust the court costs, legal fees, and other expenses incurred by it and by [name] incident to the termination of the Original Management Trust and the establishment of the Restated Management Trust.

IT IS FURTHER ORDERED that [name of successor trustee] annually submit an account of its actions in the same form as would be required of a guardian of a ward’s estate to this Court for its review and approval and to any then-serving guardian of [name of ward]’s person or estate.

IT IS FURTHER ORDERED that [name of successor trustee] submit to this Court annually an application for approval of [name of successor trustee]’s compensation for the services that [name of successor trustee] provided to [name of ward] as the ward’s trustee. The appropriateness of [name of successor trustee]’s compensation will be determined in accordance with the orders of this Court and
in the same manner as compensation of a guardian of an estate under section 1155.002 of the Texas Estates Code and any applicable successor statute.

IT IS FURTHER ORDERED that, after all the remaining funds and other property in the Original Management Trust (including any income or interest) as set forth in the Final Account have been delivered to [name of successor trustee], [name of trustee applicant] file its Application to Discharge Trustee.

SIGNED on

____________________________________
JUDGE PRESIDING

APPROVED AS TO FORM:

____________________________________
[Name]
Attorney for [name of guardian applicant]
State Bar No.: [E-mail address]
[Address]
[Telephone]
[Teletypewriter]

____________________________________
[Name]
Attorney for [name of trustee applicant]
State Bar No.: [E-mail address]
[Address]
[Telephone]
[Teletypewriter]
Application to Discharge Trustee

[Name of trustee], Trustee, trustee of the management trust created by order of this Court dated [date] for [name of ward], an incapacitated person, according to chapter 1301 of the Texas Estates Code, files this Application to Discharge Trustee and shows the following in support:

The Original Management Trust has been administered in accordance with the laws of the state of Texas and orders of this Court.

Trustee’s Final Account of the Original Management Trust has been approved by order of this Court.

Trustee has delivered all the trust estate remaining in its hands to the person entitled to receive it, as determined by order of this Court.

A receipt executed by [name of recipient] acknowledging receipt of all the assets of the Original Management Trust estate from Trustee has been filed with the Court.

Trustee prays that it be released and forever discharged as trustee from all future liability and responsibility in connection with the administration of the Original Management Trust estate

Respectfully submitted,

[Name]
Attorney for Trustee
State Bar No.: [E-mail address]
[Address] [Telephone] [Telecopier]
Form 11-16
Order Discharging Trustee

On [date] the Court considered the application of [name of trustee], Trustee, of [city], Texas, trustee of the management trust created by order of this Court dated [date] for [name of ward], an incapacitated person, according to chapter 1301 of the Texas Estates Code, for the final discharge of Trustee as trustee of the Original Management Trust. The Court finds that Trustee entered on and has since faithfully performed its duties as trustee of the Original Management Trust; that the trust estate has been administered in accordance with the laws of the state of Texas; that all orders of this Court relating to its trust have been in all respects fully complied with by Trustee; that Trustee’s Final Account has been approved by order of this Court; that Trustee has delivered all the trust estate remaining in its hands less any trust expenses set forth in Trustee’s Final Account to [name of successor trustee], Successor Trustee, and that a receipt executed by Successor Trustee acknowledging receipt of all the assets of the estate from Trustee has been filed with this Court. The Court finds that Trustee should be discharged.

IT IS THEREFORE ORDERED that [name of trustee] is discharged as trustee from the administration of the Original Management Trust.

SIGNED on

__________________________________________
JUDGE PRESIDING

APPROVED AS TO FORM:

__________________________________________
[Name]
Attorney for Guardian
State Bar No.: [E-mail address] [Address] [Telephone] [Telexcopier]
Application for Payment of Trustee’s Compensation

1. [Name of trustee], Trustee, court-appointed trustee of the Management Trust created for the sole benefit of [name of ward], Ward, an incapacitated person, has filed its first annual account with this Court for the trust pursuant to section 1301.154 of the Texas Estates Code for the period of [date] through [date]. The fee schedule for that time period was attached to the trust agreement and approved at the time of inception of the Trust.

2. Trustee was appointed by this Court on [date], continues to act in its court-appointed capacity, and continues to render services and advance necessary expenses on behalf of the trust and Ward. By reason of the performance of its duties and under the terms of the trust agreement, Trustee requests that this Court, after review and consideration, enter an order authorizing Trustee to collect its fees and expenses under the fee schedule attached as Exhibit [exhibit number/letter] from [date] through [date] in the amount of $[amount].

3. Attached as Exhibit [exhibit number/letter] is the calculation of Trustee’s fees for the period of [date] through [date] in the amount of $[amount]. There are sufficient assets in the trust to pay Trustee’s compensation.

4. Trustee states that its fee schedule is reasonable and necessary for the proper administration of this trust, and the fee schedule conforms with the prevailing charges for similar services by corporate fiduciaries in [city, county] County, Texas.

Trustee requests that this Court enter an order authorizing Trustee to pay such fees and expenses, pursuant to Exhibit [exhibit number/letter], out of the trust’s assets in the amount of $[amount].

Respectfully submitted,

[Name]
Attorney for Trustee
State Bar No.: [E-mail address]
[Address] [Telephone]
[Telecopier]

Attach exhibit(s)
Form 11-18

Order Authorizing Trustee’s Compensation

On [date] the Court considered the Application for Payment of Trustee’s Compensation to [name of trustee], Trustee, as trustee for the management trust for [name of ward], Ward, an incapacitated person, who was appointed by this Court on [date] to serve as trustee for the management trust. The Court finds that the compensation requested and rendered in this proceeding in the amount of $[amount] appears to be reasonable, that this compensation is in compliance with subchapter A of chapter 1155 of the Texas Estates Code, that Trustee has taken care of and managed the assets of Ward in compliance with Texas Estates Code requirements, that the management trust has adequate assets from which to pay this compensation, that this compensation should be authorized for payment, and that this request should be granted.

IT IS THEREFORE ORDERED that [name of trustee] as trustee for the management trust of [name of ward] pay the compensation in the amount of $[amount] to [name of trustee] from funds of [name of ward]’s management trust.

SIGNED on

JUDGE PRESIDING