

**Enforcement:
Compliance - Show Cause -
Removal**

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**IF YOU THINK COMPLIANCE IS
EXPENSIVE – TRY NON-
COMPLIANCE**

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COMPLIANCE

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- ❖ Every guardian must meet certain requirements to qualify and maintain their status as guardian.
 - Bond: Estates Code § 1105.101 (21 Days);
 - Inventory and Appraisement: Estates Code § 1154.051 (30 Days);
 - Annual Report: Estates Code § 1163.101;
 - Annual Accounting: Estates Code § 1163.001 (60 days after qualification anniversary);
 - Final Account: Estates Code § 1204.201

SHOW CAUSE

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- ❖ Show Cause Order: “an order directing a party to appear in court and explain why the party took (or failed to take) some action or why the court should or should not impose some sanction or grant some relief.” - Black’s Law Dictionary.
- ❖ A show cause can be initiated by Court or by interested party.
- ❖ Because of potential consequences (*i.e.*, removal, money damages, or imprisonment) guardian must be personally served.
- ❖ The burden of proof is on guardian.

COMMON BASIS SHOW CAUSE ORDER

- ❖ Any failure to complete following:
 - Bond: Estates Code § 1105.101 (21 Days);
 - Inventory and Appraisement: Estates Code § 1154.051 (30 Days);
 - Annual Report: Estates Code § 1163.101;
 - Annual Accounting: Estates Code § 1163.001 (60 days after qualification anniversary);
 - Final Account: Estates Code § 1204.201

OTHER INSTANCES FOR SHOW CAUSE

- ❖ Transfer of Guardianship: When guardian or any other person files application to transfer guardianship to different county, citation will issue and sureties on bond and guardian will be cited to appear and show cause why application should not be granted. Estates Code § 1023.003-004.
- ❖ Additional Inventory and Appraisement or List of Claims: Any interested party can file written complaint that property or claims were omitted from filed inventory, appraisement, and list of claims, and guardian will be cited by personal service to appear and show cause why such omissions were made and why guardian should not be required to amend inventory. Estates Code § 1154.102.
- ❖ Bond Required from Guardian Otherwise Exempt: If Guardian was not initially required to post bond, person that has claim against guardianship can file complaint under oath and court will issue citation and require guardian to show cause why they should not be required to post bond. Estates Code § 1105.103

OTHER INSTANCES FOR SHOW CAUSE

- ❖ Authority of Guardian to Engage in Certain Borrowing: Guardian may file proper application for authority to mortgage or pledge guardianship property by deed of trust or as security for indebtedness under §1151.202 of Texas Estates Code. Clerk will issue and post citation and interested persons will be required to appear and show cause why such application should not be granted. Estates Code § 1151.201.
- ❖ Liability for Nonpayment of Claims: If guardian fails to pay claim that court orders to be paid and there are sufficient estate assets to pay such claim, court may cite guardian and sureties on guardian's bond to show cause why they should not be held liable for payment of debt, interest, costs and damages resulting from failure to timely pay debt. Estates Code § 1157.108.

OTHER INSTANCES FOR SHOW CAUSE

- ❖ Failure to Apply for Sale: If guardian fails to apply to sell property to pay charges and claims against estate that have been allowed and approved or established by suit, interested party can file application and have guardian cited to appear and show cause why sale of certain property should not be ordered. Estates Code § 1158.601.
- ❖ Complaint for Failure to Rent: Interested party may file sworn complaint and have guardian cited to appear and show cause why guardian did not rent property of guardianship estate. Estates Code § 1159.005.
- ❖ Application to Show Cause for Failure to Lease Minerals: Interested party may require guardian to be cited and appear to show cause why they did not enter into lease or other mineral agreement. Estates Code § 1160.251

OTHER INSTANCES FOR SHOW CAUSE

- ❖ Guardian's Failure to Invest: Guardian fails to invest or properly invest property of guardianship estate, court on their own motion or on motion of interested party may issue citation and require guardian to show cause why property was not invested or was not invested properly. In this instance, court may appoint guardian ad litem for limited purpose of determining ward's best interest with respect to investment of ward's property at hearing on show cause. Estates Code § 1161.007.

REMOVAL

REMOVAL WITHOUT NOTICE

- ❖ Guardian may be removed without notice, if guardian:
 - fails to qualify;
 - fails to timely file inventory;
 - fails to timely give new bond;
 - absents himself from state for three months at one time without court permission or removes himself from state;
 - cannot be served, evades service, or cannot be found;
 - neglects to educate or maintain ward as liberally as ward's means and condition of ward's estate permit;
 - misapplies, embezzles, or removes from state estate assets or is about to do any of these acts; or
 - engages in conduct with respect to ward that would be
- ❖ Court must appoint both attorney ad litem and guardian ad litem for last two grounds - can be same person.

REMOVAL WITH NOTICE

- ❖ Guardian may be removed (CMRRR notice if court's motion and personal citation if interested person's motion) when:
 - Sufficient grounds appear to support belief that guardian has misapplied, embezzled, or removed property or is about to misapply, embezzle, or remove it from state;
 - Guardian fails to file any account or report required by law;
 - Guardian fails to obey court orders with respect to his duties;
 - Guardian is proved to be guilty of gross misconduct or gross mismanagement in performance of his duties;
 - Guardian becomes incapacitated, is sent to penitentiary, or is otherwise incapable of performing his duties;
 - Guardian engages in conduct with respect to ward that would be considered to be abuse, neglect, or exploitation, as those terms are defined by section 48.002 of Human Resources Code or, if engaged in with respect to elderly or disabled person, as defined by that section;

REMOVAL WITH NOTICE

- Guardian neglects to educate or maintain ward to extent ward's estate and ward's ability or condition permit;
- Guardian interferes with ward's progress or participation in community programs;
- Guardian, if guardian is private professional guardian, fails to be certified as required by subchapter G, chapter 1104, of Estates Code;
- Court determines that, because of dissolution of joint guardians' marriage, termination of guardians' joint appointment and continuation of only one of joint guardians as sole guardian is in best interests of ward; or
- Guardian would be ineligible for appointment under subchapter H, chapter 1104, of Estates Code.

Court is not prevented from finding grounds other than those provided by Estates Code to justify removal of guardian.

REMOVAL ORDER

- ❖ The order removing guardian must :
 - State reasons for removal.
 - State Letters of Guardianship issued to person who is removed shall, if removed person has been personally served with citation, be surrendered and all of those letters canceled of record.
 - Require delivery of remainder of estate and control of ward to successor guardian on qualification.
- ❖ Failure to comply allows court to impose damages of 10% of assets retained per month until delivered to proper person.

LIMITED RIGHT TO SEEK REINSTATEMENT

- ❖ A guardian who is removed for failure to qualify or file inventory has 30 days of removal order to file application with court for hearing to determine whether he should be reinstated.
- ❖ On filing of application, clerk must issue notice in compliance with section 1203.056(c). Court must hold hearing on application as soon as practicable but no later than 60 days from removal order.
- ❖ If, at conclusion of hearing, court is satisfied by preponderance of evidence that applicant did not engage in conduct that directly led to guardian's removal, court shall set aside order appointing successor representative, if any, and shall enter order reinstating guardian. Estates Code § 1203.056(e).