

A Trustee's Road Map to Court Created Trusts

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February 9, 2023



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TRUSTEE'S ROAD MAP TO COURT CREATED TRUSTS



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<u>Section 1301 Trust</u>	<u>Section 142</u>
Least restrictive alternative	No guardian
Family Dynamics	Family Dynamics/Asset protection
Guardian unable to post bond	Guardian unable to post bond
Minor	Minor
Preservation of benefits	Preservation of benefits
Complicated or sizeable assets	Large settlement

2

Romulus: What should we name this great city?

Remus: Reme.

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



3

DEFINITION OF INCAPACITY

142 Definition:

“a person who is impaired because of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or any other cause except status as a minor to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.”

1301 Definition:

“a minor, an adult because of physical or mental condition, is *substantially* unable to: provide food, clothing, or shelter for himself or herself; or care for the person’s own physical health; or manage the person’s own financial affairs; or a person who must have a guardian appointed for the person to receive funds due the person from a governmental source.”

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WHO CAN APPLY?



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142 Trusts:

1. Next Friend
2. Guardian Ad Litem
3. Attorney Ad Litem (possibly)
4. Not a guardian*



1301 Trusts:

1. Guardian of a Ward
2. An attorney ad litem or guardian ad litem for ward
3. A person interested in the welfare of an alleged incapacitated*
4. Attorney Ad Litem/Guardian Ad Litem*
5. A person who only has a physical disability

WHO CAN BE TRUSTEE?



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Section 1301 Trust

Financial Institution
TEX. FIN. CODE ANN. § 201.101

Individual if less than \$150,000

Individual if no financial institution is willing to serve or beneficiary is one with only a physical disability

Section 142

Financial Institution
TEX. FIN. CODE ANN. § 201.101

Individual is less than \$50,000

Individual if no financial institution is willing to serve



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