



Using  
Temporary  
Guardianships to Avoid  
Permanent Guardianships

# GOALS FOR THIS PRESENTATION:

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WHAT ARE TEMPORARY GUARDIANSHIPS?



# GOALS FOR THIS PRESENTATION:

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## WHAT ARE TEMPORARY GUARDIANSHIPS?

- WHICH STATUTES GOVERN TEMPORARY GUARDIANSHIPS?



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## WHAT ARE TEMPORARY GUARDIANSHIPS?

- WHICH STATUTES GOVERN TEMPORARY GUARDIANSHIPS?
- WHAT EVIDENCE IS REQUIRED FOR THE GRANTING OF A TEMPORARY GUARDIANSHIP?



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## WHEN ARE TEMPORARY GUARDIANSHIPS **NOT** A GOOD IDEA?





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## WHEN ARE TEMPORARY GUARDIANSHIPS **NOT** A GOOD IDEA?

- LACK OF SUFFICIENT EVIDENCE/**ACTUAL EMERGENCY.**



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## WHEN ARE TEMPORARY GUARDIANSHIPS **NOT** A GOOD IDEA?

- LACK OF SUFFICIENT EVIDENCE/ACTUAL EMERGENCY.
- WHEN THE COURT FEELS YOU ARE **LINE JUMPING**.



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- LACK OF SUFFICIENT EVIDENCE/ACTUAL EMERGENCY.
- WHEN THE COURT FEELS YOU ARE LINE JUMPING.
- WHEN THERE IS ANOTHER ALTERNATIVE.
- WHEN **ANOTHER GUARDIAN** IS SERVING.



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- WHEN THE COURT FEELS YOU ARE LINE JUMPING
- WHEN THERE IS ANOTHER ALTERNATIVE.
- WHEN ANOTHER GUARDIAN IS SERVING.

3



HOW CAN A TEMPORARY GUARDIANSHIP BE OBTAINED?



**SECTION ONE**  
**WHAT ARE**  
**TEMPORARY**  
**GUARDIANSHIPS?**



**MAYHEM IS COMING**

# WHAT ARE TEMPORARY GUARDIANSHIPS?







# WHAT ARE TEMPORARY GUARDIANSHIPS?

**BLOOD**



# WHAT ARE TEMPORARY GUARDIANSHIPS?



## BLOOD

WHAT'S THE **MEDICAL** EMERGENCY?



# WHAT ARE TEMPORARY GUARDIANSHIPS?

## FLOOD



# WHAT ARE TEMPORARY GUARDIANSHIPS?

## FLOOD

WHAT'S THE UNEXPECTED DISASTER?



# WHAT ARE TEMPORARY GUARDIANSHIPS?

CRUD



# WHAT ARE TEMPORARY GUARDIANSHIPS?

## CRUD

WHAT WRONGFUL ACTIONS HAVE TAKEN  
PLACE THAT A TEMPORARY  
GUARDIANSHIP MAY FIX?



# WHAT ARE TEMPORARY GUARDIANSHIPS?

**BLOOD, FLOOD, CRUD**



# WHAT ARE TEMPORARY GUARDIANSHIPS?



**BLOOD, FLOOD, CRUD**  
SO **ALWAYS, ALWAYS, ALWAYS**  
**EMERGENCIES**



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- WHICH STATUTES GOVERN TEMPORARY GUARDIANSHIPS?



# WHAT IS A TEMPORARY GUARDIANSHIP?

TEMPORARY GUARDIANSHIPS IN TEXAS ARE GOVERNED BY CHAPTER 1251 OF THE TEXAS ESTATES CODE.

# WHAT IS A TEMPORARY GUARDIANSHIP?

## **§1251.001** OUTLINES THE SITUATIONS IN WHICH A TEMPORARY GUARDIANSHIP IS TO BE USED:

- (a) A court shall appoint a temporary guardian, with limited powers as the circumstances of the case require, if the court:
  - 1. is presented with substantial evidence that a person may be an incapacitated person; and
  - 2. has probable cause to believe that the person, the person's estate, or both require the immediate appointment of a guardian.
- (b) The person for whom a temporary guardian is appointed under this chapter retains all rights and powers that are not specifically granted to the person's temporary guardian by court order.

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# WHAT IS A TEMPORARY GUARDIANSHIP?

FOUR LEVELS OF EVIDENCE IN COURT:

1. **“BEYOND A REASONABLE DOUBT ”** –STRONG ENOUGH THAT NO REASONABLE PERSON WOULD DOUBT IT.

# WHAT IS A TEMPORARY GUARDIANSHIP?

FOUR LEVELS OF EVIDENCE IN COURT:

1. “BEYOND A REASONABLE DOUBT”—STRONG ENOUGH THAT NO REASONABLE PERSON WOULD DOUBT IT.
2. “**CLEAR AND CONVINCING**”—SUBSTANTIALLY MORE LIKELY TO BE TRUE THAN NOT.

# WHAT IS A TEMPORARY GUARDIANSHIP?

## FOUR LEVELS OF EVIDENCE IN COURT:

1. “BEYOND A REASONABLE DOUBT”—STRONG ENOUGH THAT NO REASONABLE PERSON WOULD DOUBT IT.
2. “CLEAR AND CONVINCING”—SUBSTANTIALLY MORE LIKELY TO BE TRUE THAN NOT.
3. **“PREPONDERANCE OF THE EVIDENCE”** —MORE LIKELY THAN NOT TO BE TRUE.

# WHAT IS A TEMPORARY GUARDIANSHIP?

## FOUR LEVELS OF EVIDENCE IN COURT:

1. “BEYOND A REASONABLE DOUBT”—STRONG ENOUGH THAT NO REASONABLE PERSON WOULD DOUBT IT.
2. “CLEAR AND CONVINCING”—SUBSTANTIALLY MORE LIKELY TO BE TRUE THAN NOT.
3. “PREPONDERANCE OF THE EVIDENCE—MORE LIKELY THAN NOT TO BE TRUE.
4. “**SUBSTANTIAL**”—ANY REASONABLE MIND WOULD SUPPORT IT.  
*THIS IS THE LOWEST POSSIBLE LEVEL OF EVIDENCE.*



# WHAT IS A TEMPORARY GUARDIANSHIP?

## §1251.001 OUTLINES THE SITUATIONS IN WHICH A TEMPORARY GUARDIANSHIP IS TO BE USED:

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  - 1. is presented with **substantial evidence** that a person may be an incapacitated person;
  - 2. has probable cause to believe that the person, the person's estate, or both require the immediate appointment of a guardian.
- (b) The person for whom a temporary guardian is appointed under this chapter retains all rights and powers that are not specifically granted to the person's temporary guardian by court order.

# WHAT IS A TEMPORARY GUARDIANSHIP?

THEREFORE, THE COURT MUST FIND **ONLY** THAT “A REASONABLE PERSON WOULD SUPPORT THE DECISION” THAT THE TEMPORARY GUARDIANSHIP SHOULD BE CREATED.

THIS MEANS THAT IN ORDER TO ESTABLISH A TEMPORARY GUARDIANSHIP, ONLY THE MINIMUM LEVEL OF EVIDENCE IS REQUIRED...

# WHAT IS A TEMPORARY GUARDIANSHIP?

THEREFORE, THE COURT MUST FIND ONLY THAT “A REASONABLE PERSON WOULD SUPPORT THE DECISION” THAT THE TEMPORARY GUARDIANSHIP SHOULD BE CREATED.

THIS MEANS THAT IN ORDER TO ESTABLISH A TEMPORARY GUARDIANSHIP, ONLY THE MINIMUM LEVEL OF EVIDENCE IS REQUIRED...

THIS IS COMPLETELY DIFFERENT FROM A PERMANENT GUARDIANSHIP, WHERE THE COURT MUST FIND BY “CLEAR AND CONVINCING EVIDENCE” THAT THE PROPOSED WARD IS AN INCAPACITATED PERSON. TEC §1101.101.

# WHAT IS A TEMPORARY GUARDIANSHIP?

## FOUR LEVELS OF EVIDENCE IN COURT:

1. “BEYOND A REASONABLE DOUBT”—STRONG ENOUGH THAT NO REASONABLE PERSON WOULD DOUBT IT.
2. **“CLEAR AND CONVINCING”**—SUBSTANTIALLY MORE LIKELY TO BE TRUE THAN NOT. **PERMANENT GUARDIANSHIPS**
3. “PREPONDERANCE OF THE EVIDENCE—MORE LIKELY THAN NOT TO BE TRUE.
4. **“SUBSTANTIAL ”**—ANY REASONABLE MIND WOULD SUPPORT IT. **TEMPORARY GUARDIANSHIPS** .

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# WHAT IS A TEMPORARY GUARDIANSHIP?

TEMPORARY GUARDIANSHIPS REQUIRE ONLY MINIMAL NOTICE:

§1251.005 REQUIRES THAT CITATION BE SERVED ON:

1. THE PROPOSED WARD
2. THE PERSON NAMED TO BE TEMPORARY GUARDIAN IF THAT PERSON DOESN'T FILE THE APPLICATION TO CREATE THE GUARDIANSHIP.
3. THE PROPOSED WARD'S APPOINTED ATTORNEY (AAL) IF APPROPRIATE.

# WHAT IS A TEMPORARY GUARDIANSHIP?

PERMANENT GUARDIANSHIPS REQUIRE MUCH MORE SUBSTANTIAL NOTICE:

§1051.101 REQUIRES THAT:

1. CITATION BE SERVED ON:
  - A. THE PROPOSED WARD
  - B. THE PROPOSED WARD'S PARENTS, IF THEIR WHEREABOUTS ARE OR CAN BE REASONABLY KNOWN
  - C. ANY COURT APPOINTED PERSON HAVING CONTROL OF THE CARE AND WELFARE OF THE PROPOSED WARD
  - D. THE PERSON'S SPOUSE, IF THEIR WHEREABOUTS ARE OR CAN BE REASONABLY KNOWN
  - E. ANY PERSON NAMED IN THE APPLICATION TO SERVE AS GUARDIAN IF THAT PERSON DOES NOT FILE THE APPLICATION.

# WHAT IS A TEMPORARY GUARDIANSHIP?

PERMANENT GUARDIANSHIPS REQUIRE MUCH MORE SUBSTANTIAL NOTICE:

§1051.101 ALSO REQUIRES THAT:

2. NOTICE BE GIVEN TO:

- A. ANY ADULT CHILD OR SIBLING OF THE PROPOSED WARD
- B. ADMINISTRATOR OF A NURSING HOME WHERE THE PROPOSED WARD RESIDES,  
OPERATOR OF THE NURSING HOME WHERE THE PROPOSED WARD RESIDES
- C.
- D. A PERSON KNOWN TO HOLD A POWER OF ATTORNEY FOR THE PROPOSED WARD
- E. A PERSON DESIGNATED TO SERVE AS GUARDIAN IN A DECLARATION OF  
GUARDIANSHIP FOR SELF EXECUTED BY PROPOSED WARD, IF KNOWN
- F. A PERSON DESIGNATED TO SERVE AS GUARDIAN IN THE WILL OF A PARENT WHO HAS  
DIED,  
IF KNOWN
- G. A PERSON DESIGNATED TO SERVE AS GUARDIAN IN ANY OTHER DECLARATION MADE  
BY  
DECEASED PARENT
- H. ALL RELATIVES WITHIN THE "THIRD DEGREE OF CONSANGUINITY", IF THE PROPOSED  
WARD HAS NO SPOUSE, PARENT, ADULT CHILD OR SIBLINGS.



# WHAT IS A TEMPORARY GUARDIANSHIP?

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### 2. NOTICE BE GIVEN TO:

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- D. A PERSON KNOWN TO HOLD A POWER OF ATTORNEY FOR THE PROPOSED WARD
- E. A PERSON DESIGNATED TO SERVE AS GUARDIAN IN A DECLARATION OF GUARDIANSHIP FOR SELF EXECUTED BY PROPOSED WARD, IF KNOWN
- F. A PERSON DESIGNATED TO SERVE AS GUARDIAN IN THE WILL OF A PARENT WHO HAS DIED, IF KNOWN
- G. A PERSON DESIGNATED TO SERVE AS GUARDIAN IN ANY OTHER DECLARATION MADE BY DECEASED PARENT
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## WHAT ARE TEMPORARY GUARDIANSHIPS?

- WHICH STATUTES GOVERN TEMPORARY GUARDIANSHIPS?
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# WHAT IS A TEMPORARY GUARDIANSHIP?

## §1251.001 OUTLINES THE SITUATIONS IN WHICH A TEMPORARY GUARDIANSHIP IS TO BE USED:

- (a) A court shall appoint a temporary guardian, with limited powers as the circumstances of the case require, if the court:
  - 1. is presented with substantial evidence that a person **may be** an incapacitated person; and
  - 2. has probable cause to believe that the person, the person's estate, or both require the immediate appointment of a guardian.
- (b) The person for whom a temporary guardian is appointed under this chapter retains all rights and powers that are not specifically granted to the person's temporary guardian by court order.

# WHAT IS A TEMPORARY GUARDIANSHIP?

TEC §1002.017 DEFINES AN INCAPACITATED PERSON AS:

1. A MINOR

2. AN ADULT WHO, BECAUSE OF A PHYSICAL OR MENTAL CONDITION, IS SUBSTANTIALLY UNABLE TO:

- A. PROVIDE FOOD, CLOTHING, OR SHELTER FOR HIMSELF OR HERSELF; OR
- B. CARE FOR THE PERSON'S OWN PHYSICAL HEALTH; OR
- C. MANAGE THE PERSON'S OWN FINANCIAL AFFAIRS; OR

3. A PERSON WHO MUST HAVE A GUARDIAN APPOINTED FOR THE PERSON TO RECEIVE FUNDS DUE THE PERSON FROM A GOVERNMENTAL SOURCE.

# WHAT IS A TEMPORARY GUARDIANSHIP?

## 1251.002 NO PRESUMPTION OF INCAPACITY

A PERSON FOR WHOM A TEMPORARY GUARDIAN IS APPOINTED UNDER THIS CHAPTER **MAY NOT BE PRESUMED** TO BE INCAPACITATED.

# WHAT IS A TEMPORARY GUARDIANSHIP?

WHICH MEANS THAT WHILE THE PROPOSED WARD MAY BE INCAPACITATED, THERE IS ACTUALLY A **PRESUMPTION OF CAPACITY** IN A TEMPORARY GUARDIANSHIP.

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**WHAT IS A TEMPORARY GUARDIANSHIP?**

**WHAT ARE THE **TIMING** ISSUES IN A  
TEMPORARY GUARDIANSHIP?**

# WHAT IS A TEMPORARY GUARDIANSHIP?

## WHAT ARE THE **TIMING** ISSUES IN A TEMPORARY GUARDIANSHIP?

- a. A HEARING ON AN APPLICATION FOR THE APPOINTMENT OF A TEMPORARY GUARDIAN MUST TAKE PLACE **WITHIN 10 DAYS OF THE FILING** OF THE APPLICATION (TEC §1251.006)

# WHAT IS A TEMPORARY GUARDIANSHIP?

## WHAT ARE THE **TIMING** ISSUES IN A TEMPORARY GUARDIANSHIP?

- a. A HEARING ON AN APPLICATION FOR THE APPOINTMENT OF A TEMPORARY GUARDIAN MUST TAKE PLACE WITHIN 10 DAYS OF THE FILING OF THE APPLICATION (TEC §1251.006)

...UNLESS THE PROPOSED WARD OR HIS/HER ATTORNEY AGREES TO **POSTPONE THE HEARING FOR 30 DAYS.**

# WHAT IS A TEMPORARY GUARDIANSHIP?

## WHAT ARE THE **TIMING** ISSUES IN A TEMPORARY GUARDIANSHIP?

- b. THE TEMPORARY GUARDIANSHIP SHALL LAST **NO LONGER THAN 60 DAYS**. (TEC §1251.151)

# WHAT IS A TEMPORARY GUARDIANSHIP?

## WHAT ARE THE **TIMING** ISSUES IN A TEMPORARY GUARDIANSHIP?

- b. THE TEMPORARY GUARDIANSHIP SHALL LAST NO LONGER THAN 60 DAYS. (TEC §1251.151)  
...UNLESS EXTENDED UNDER TEC §1251.052:  
“**BECAUSE A CONTEST EXISTS**”.

# WHAT IS A TEMPORARY GUARDIANSHIP?

## WHAT ARE THE **TIMING** ISSUES IN A TEMPORARY GUARDIANSHIP?

- b. THE TEMPORARY GUARDIANSHIP SHALL LAST NO LONGER THAN 60 DAYS. (TEC §1251.151)  
...UNLESS EXTENDED UNDER TEC §1251.052:  
“BECAUSE A CONTEST EXISTS”,  
UNTIL THE **QUALIFICATION OF A PERMANENT GUARDIAN**,

# WHAT IS A TEMPORARY GUARDIANSHIP?

## WHAT ARE THE **TIMING** ISSUES IN A TEMPORARY GUARDIANSHIP?

b. THE TEMPORARY GUARDIANSHIP SHALL LAST NO LONGER THAN 60 DAYS. (TEC §1251.151)

...UNLESS EXTENDED UNDER TEC §1250.052:

“BECAUSE A CONTEST EXISTS”,

UNTIL THE QUALIFICATION OF A PERMANENT

GUARDIAN,

**FOR NINE MONTHS AFTER QUALIFICATION, UNLESS EXTENDED.**



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# WHAT IS A TEMPORARY GUARDIANSHIP?

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FINAL THOUGHTS ABOUT WHAT  
TEMPORARY GUARDIANSHIPS ARE...



# WHAT IS A TEMPORARY GUARDIANSHIP?

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- (b) The person for whom a temporary guardian is appointed under this chapter retains all rights and powers that are not specifically granted to the person's temporary guardian by court order.

# WHAT IS A TEMPORARY GUARDIANSHIP?

THIS MEANS THAT ALL TEMPORARY GUARDIANSHIPS ARE  
ALWAYS LIMITED!!

A TEMPORARY GUARDIAN IS ONLY GRANTED THE SPECIFIC POWERS THAT THE  
COURT AUTHORIZES IN WRITING.

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# WHAT IS A TEMPORARY GUARDIANSHIP?



BEST ANIMATIONS

IF A PERMANENT GUARDIAN IS APPOINTED AFTER THE TEMPORARY GUARDIAN, OR IF A TEMPORARY GUARDIANSHIP IS CONVERTED TO A PERMANENT GUARDIANSHIP, THE CASE INCURS SUBSTANTIALLY MORE **FEES AND EXPENSES** FOR THE WARD.

# WHAT IS A TEMPORARY GUARDIANSHIP?

THE LIMITED EVIDENCE REQUIRED, LIMITED NOTICE REQUIRED, AND POSSIBLE ADDITIONAL LEGAL FEES AND EXPENSES INCURRED IN TEMPORARY GUARDIANSHIPS IF A PERMANENT GUARDIAN IS APPOINTED LATER HAVE SOMETIMES MADE TEMPORARY GUARDIANSHIPS UNPOPULAR IN COURTS...



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# WHAT IS A TEMPORARY GUARDIANSHIP?

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JUDGE MIKE WOOD, FOR INSTANCE...



SECTION TWO

WHEN ARE TEMPORARY  
GUARDIANSHIPS **NOT** A  
GOOD IDEA?



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- LACK OF SUFFICIENT EVIDENCE/**ACTUAL** EMERGENCY.







# WHAT ARE TEMPORARY GUARDIANSHIPS?



**BLOOD, FLOOD, CRUD**  
SO **ALWAYS, ALWAYS, ALWAYS**  
**EMERGENCIES**



# WHEN ARE TEMPORARY GUARDIANSHIPS NOT A GOOD IDEA?



WHEN ARE TEMPORARY  
GUARDIANSHIPS NOT A GOOD  
IDEA?

NO BLOOD



WHEN ARE TEMPORARY  
GUARDIANSHIPS NOT A GOOD  
IDEA?

NO BLOOD  
(OR, NOT ACTUAL  
BLEEDING)



WHEN ARE TEMPORARY  
GUARDIANSHIPS NOT A GOOD  
IDEA?

NO BLOOD

(OR, THERE'S BLEEDING,  
BUT IT'S UNDER CONTROL)



WHEN ARE TEMPORARY  
GUARDIANSHIPS NOT A GOOD  
IDEA?

MEDICAL EMERGENCY BUT  
NO DIFFICULTY MAKING  
DECISIONS FOR PATIENT



**TEX. HEALTH & SAFETY CODE §597.041  
(FAMILY SURROGATES)  
26 TEX. ADMIN. CODE  
§ 261.286 ET SEQ.  
(INSTITUTIONAL SURROGATES)**



WHEN ARE TEMPORARY  
GUARDIANSHIPS NOT A GOOD  
IDEA?

NO FLOOD





WHEN ARE TEMPORARY  
GUARDIANSHIPS NOT A GOOD  
IDEA?

NO FLOOD  
(OR THE FLOOD IS  
CONTAINED)



WHEN ARE TEMPORARY  
GUARDIANSHIPS NOT A GOOD  
IDEA?

NO CRUD



WHEN ARE TEMPORARY  
GUARDIANSHIPS NOT A GOOD  
IDEA?

NO CRUD  
(BECAUSE THINGS AREN'T  
EXACTLY THE WAY THEY SEEM)

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- LACK OF SUFFICIENT EVIDENCE/ACTUAL EMERGENCY.
- WHEN THE COURT FEELS YOU ARE **LINE JUMPING**.





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- LACK OF SUFFICIENT EVIDENCE/ACTUAL EMERGENCY.
- WHEN THE COURT FEELS YOU ARE LINE JUMPING.
- WHEN THERE IS ANOTHER **ALTERNATIVE**.





WHEN ARE TEMPORARY  
GUARDIANSHIPS NOT A GOOD  
IDEA?

WHEN ANY OTHER ALTERNATIVE OR  
SUPPORT/SERVICE WILL SOLVE  
THE PROBLEM

# GOALS FOR THIS PRESENTATION:



1

## WHAT ARE TEMPORARY GUARDIANSHIPS?

- WHICH STATUTES GOVERN TEMPORARY GUARDIANSHIPS?
- WHAT EVIDENCE IS REQUIRED FOR THE GRANTING OF A TEMPORARY GUARDIANSHIP?
- WHAT NOTICE MUST BE GIVEN IN A TEMPORARY GUARDIANSHIP?
- WHY IS THE ISSUE OF CAPACITY CRUCIAL IN TEMPORARY GUARDIANSHIPS?
- WHAT ARE THE TIMING ISSUES IN TEMPORARY GUARDIANSHIPS?

2

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- LACK OF SUFFICIENT EVIDENCE/ACTUAL EMERGENCY.
- WHEN THE COURT FEELS YOU ARE LINE JUMPING.
- WHEN THERE IS ANOTHER ALTERNATIVE.
- WHEN **ANOTHER GUARDIAN** IS SERVING.





WHEN ARE TEMPORARY  
GUARDIANSHIPS NOT A GOOD  
IDEA?



FINAL THOUGHTS ABOUT WHEN  
TEMPORARY GUARDIANSHIPS ARE  
NOT A GOOD IDEA...

# WHEN ARE TEMPORARY GUARDIANSHIPS NOT A GOOD IDEA?



WHEN THEY  
CREATE  
DRAMA





## SECTION THREE

WHEN, THEN, CAN A  
TEMPORARY  
GUARDIANSHIP **AVOID** A  
PERMANENT  
GUARDIANSHIP?

# WHEN CAN A TEMPORARY GUARDIANSHIP AVOID A PERMANENT GUARDIANSHIP?



1. WHEN USED TO FIND OR RETRIEVE A PROPOSED WARD

# WHEN CAN A TEMPORARY GUARDIANSHIP **AVOID** A PERMANENT GUARDIANSHIP?



1. WHEN USED TO FIND OR RETRIEVE A PROPOSED WARD
2. WHEN USED TO IMMEDIATELY **FIX A WRONG WITH PERMANENT CONSEQUENCES**

# WHEN CAN A TEMPORARY GUARDIANSHIP **AVOID** A PERMANENT GUARDIANSHIP?



1. WHEN USED TO FIND OR RETRIEVE A PROPOSED WARD
2. WHEN USED TO IMMEDIATELY FIX A WRONG WITH PERMANENT CONSEQUENCES
3. WHEN USED TO **FIX A TEMPORARY PROBLEM**

# WHEN CAN A TEMPORARY GUARDIANSHIP AVOID A PERMANENT GUARDIANSHIP?



1. WHEN USED TO FIND OR RETRIEVE A PROPOSED WARD
2. WHEN USED TO IMMEDIATELY FIX A WRONG WITH PERMANENT CONSEQUENCES
3. WHEN USED TO FIX A TEMPORARY PROBLEM
4. WHEN USED TO **CALM THE CHAOS** IN THE SITUATION

THANK YOU!



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