

# Ellis County Court at Law No. 1

JUDGE JIM CHAPMAN  
Ellis County Courts Building  
109 S. Jackson  
Waxahachie, TX 75165



Updated August 2023

## Process for the Sale of Real Property in a Dependent Administration or Guardianship

Counselors,

Welcome to Ellis County Court at Law No. 1. As you know, sale of real property in a dependent administration or guardianship is a complex multi-step process. Any sale of real property in a Dependent Administration or Guardianship without obtaining a court order is **VOID**, so it is imperative that this process be followed.

We want you to understand how this Court handles such matters so that the ensuing process is as smooth as possible for you and your client. This guide is designed to help you successfully navigate the process.

I hope you will find this guide useful, but it comes with an important caveat. This guide is not a substitute for the Estates Code or your legal expertise, but if you follow it your chances of encountering unanticipated complications should be considerably reduced. Everything in this guide is consistent with the Estates Code, but this very basic guide makes no pretense of being comprehensive. You should always read the underlying statutes for a complete understanding of the process. The process is substantially the same for decedent's estates and guardianship estates, so the guide may be used for either situation.

Jim Chapman, Judge Presiding

### **I. APPLICATION FOR SALE OF REAL PROPERTY** §356.251-.252 (Estates) & §1158.25-.252 (Guardianship)

The application for sale of real property should contain all the elements listed in the above referenced statutes. Citation will need to be posted with a return date of the first Monday after 10 days. The Court also requires that citation and a copy of the application be sent via a "Qualified Delivery Method" to all interested parties in the case. See newly enacted §22.0295 for the definition of Qualified Delivery Method.

### **II. ORDER TO SELL REAL PROPERTY** §356.256 & §1158.256

The statutory elements must be put in the proposed order. In addition, by separate letter counsel should indicate the anticipated price of the sale. This is for the purpose of setting a possible bond increase and should reflect the highest possible price so it will not be necessary to update the bond again if the sales price ends up being more than the anticipated amount. The Court will update the bond amount in this Order, if necessary. This is important, because the Court cannot approve the ultimate sale until the additional bond is given. If you wait until the hearing on approving the ultimate sale to address the bond amount there will be a resulting delay in obtaining the signed order, and a resulting delay on closing the sale, while the new bond is obtained.

If there is no objection filed to the application within the prescribed citation return time the Court will generally sign off on a proposed Order to Sell Real Property without a hearing. Please note this Order is not an approval of the final sale, but merely authorizes the initiation of the sales process.

### **III. ENTER INTO A CONTRACT**

While you may request a public auction, the vast majority of sales are made through a private sale. You should note in any contract for the sale of the real property that such contract is contingent on Court approval.

### **IV. REPORT OF SUCCESSFUL BID OR CONTRACT**

§356.551 & §1158.551

Once there is a successful bid or contract for the sale of the real property a Report should be filed that contains all the requisites contained in the above referenced statutes. The Report must be on file with the Court for five days before the Court may take action. You may schedule a hearing to obtain approval of the sale once the Report has been filed.

### **V. ORDER APPROVING THE SALE**

§356.556 & §1158.556

At the hearing the Court will determine whether the proposed sale is for a fair price. To make that determination the Court requires that the applicant obtain an appraisal from a certified appraiser. A Broker's Opinion Letter will not suffice as the real estate agent is typically an interested party in the transaction as their compensation is generally conditioned upon the sale closing. The appraiser is not required to appear at the hearing if the sale is unopposed.

If Court approval of the sale is granted, the personal representative or guardian may proceed to close the sale and convey the property in compliance with the terms of sale.