

**SYNOPSIS OF SIMILARITIES AND DIFFERENCES OF  
GUARDIAN OF ESTATE VERSUS 867 TRUST**

**BY:**

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	<b>GUARDIAN OF ESTATE</b>	<b>867 TRUST</b>
Applicant	Any interested person. TEX. PROB. CODE § 601(15).	Guardian Attorney ad litem Guardian ad litem. TEX. PROB. CODE § 867(b).
Application Process	Application to Appoint Guardian. TEX. PROB. CODE. § 682.	Application to Create Trust. TEX. PROB. CODE § 867(b)
Proof Required	Proposed ward is an incapacitated person. TEX. PROB. CODE. § 684.	Trust is in ward's or incapacitated person's best interest. TEX. PROB. CODE § 867 (b).
Value of Estate	Any amount.	Generally in excess of \$50,000-\$100,000.
Appointee	Individual or financial institution.	Generally a financial institution (defined to be a financial institution with trust powers), except an individual may serve if value of trust is under \$50,000 or no financial institution will serve. TEX. PROB. CODE. § 867(c).
Bond	All individuals required to be bonded equal to non-real property and annual income. TEX. PROB. CODE. § 703.	No bond required for a financial institution. An individual trustee is required to be bonded equal to non-real property and annual income. TEX. PROB. CODE. § 868A.
Court Supervision	Full supervision.	Limited supervision.

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Distributions	As authorized by court. Some courts allow income to be expended without prior authorization. TEX. PROB. CODE. §§ 770, 776.	Based on health, education, support and maintenance of ward and persons' ward legally obligated to support. TEX. PROB. CODE. § 868(b).
Compensation of Appointee	Based on statutory formula of generally 5% of gross income and 5% of amounts paid out. TEX. PROB. CODE § 665(b).	Based on statutory formula of generally 5% of gross income and 5% of amounts paid out. TEX. PROB. CODE § 665(b); or, Standard Fee Schedule. TEX. PROB. CODE § 665(c).
Coordination With Governmental Benefits	Cannot qualify for special needs.	Can currently be drafted to qualify as special needs trust. TEX. PROB. CODE § 868(d).
Investments	Limited investments (CD/Muni Bonds) without court order. TEX. PROB. CODE § 855(b). Court order required for equity or other investments. TEX. PROB. CODE § 856(a).	Pursuant to the Texas Trust Code providing prudent investor rule. TEX. PROP. CODE § 111.01, <i>eq. seq.</i>
Tax Status	Individual	Grantor Trust. Rev. Rul. 83-25.
Taxes	Responsible for preparation and filing of all income tax returns. TEX. PROB. CODE § 741(f).	Trustee responsible for providing tax information to proper party unless otherwise court ordered.
Court Jurisdiction	All guardianship matters. TEX. PROB. CODE § 604.	All trust matters. TEX. PROB. CODE § 869C.
Annual Accounting	Annual accounting required. TEX. PROB. CODE § 741.	Annual accounting required in same manner as guardian of estate. Some courts authorize trustee to attach statements as accounting. TEX. PROB. CODE. § 871.

Power To Pursue Claims	Generally has power to pursue claims. TEX. PROB. CODE § 773.	Trustee appears to have power to pursue claims but generally does not want to pursue unliquidated claims or become involved in litigation.
Termination	Minors: Age 18 Adults: Restoration or death TEX. PROB. CODE § 745.	Minors: Age 25 Adults: Restoration or death TEX. PROB. CODE § 870.
Final Accounting	Final accounting required. TEX. PROB. CODE § 749.	Final accounting required in same manner as guardian of estate. Some courts authorize trustee to attach statements as accounting. TEX. PROB. CODE § 873.