



TEXAS  
Health and Human  
Services

# Guardianship

---

## A Basic Introduction

# Guardianship 101 (1 of 18)

---

## A Basic Introduction

- Legal process to provide protection to adults who are incapacitated
- Guardians can be a person or an entity
  - Family member, friend
  - Private Professional Guardian
  - Guardianship Program (Not for Profit Agency)
  - Church or other charitable group
  - County or state agency (e.g. Harris County, HHSC)



TEXAS  
Health and Human  
Services

# Guardianship 101 (2 of 18)

---

## A Basic Introduction

### Incapacity

- An adult individual who, because of a physical or mental condition:
  - Is substantially unable to provide food, clothing, or shelter for himself or herself
  - To care for their own physical health
  - To manage their own financial affairs

(Texas Estates Code 1002.017)



TEXAS  
Health and Human  
Services

# Guardianship 101 (3 of 18)

---

## A Basic Introduction

- Types of guardianship
  - Guardian of the person
  - Guardian of the estate
  - Guardian of person and estate (plenary)
  - Limited guardianship
- Lengths of guardianship
  - Temporary
  - Permanent



TEXAS  
Health and Human  
Services

# Guardianship 101 (4 of 18)

---

## A Basic Introduction

### Findings required:

Before appointing a guardian, the court must find by clear and convincing evidence that:

- The proposed ward is an incapacitated person;
- It is in the best interest of the proposed ward to have the court appoint a person as guardian of the proposed ward; and
- The rights of the proposed ward or the proposed ward's property will be protected by the appointment of a guardian.

### Estates Code §1101.101



TEXAS  
Health and Human  
Services

# Guardianship 101 (5 of 18)

---

## A Basic Introduction

- Guardianship is the most restrictive and permanent solution to incapacity
  - Authority to make all or most significant decisions given to someone else
  - Difficult but not impossible to regain rights once taken away
  - Must exhaust any/all less restrictive alternatives initially and ongoing



TEXAS  
Health and Human  
Services

# Guardianship 101 (6 of 18)

---

## A Basic Introduction

### Persons disqualified to serve as guardians.

- A minor
- A person whose conduct is notoriously bad
- An incapacitated person
- A person who is a party, or whose parent is a party, to a lawsuit concerning or affecting the welfare of the proposed ward, unless otherwise ordered by the court
- A person who is otherwise indebted to the ward, which creates a conflict of interest

**Estates Code §1104.351-357**



**TEXAS**  
Health and Human  
Services



# Guardianship 101 (7 of 18)

---

## A Basic Introduction

### Ways HHSC Guardianship Receives Referrals

- Adult Protective Services
  - Where an allegation of abuse, neglect, or exploitation has been validated on an aged adult or adult with a disability
- Child Protective Services
  - When a child with a disability ages out of conservatorship at age eighteen and is in need of a permanent guardian to ensure continued care and oversight of that individual



**TEXAS**  
Health and Human  
Services



# Guardianship 101 (8 of 18)

---

## A Basic Introduction

When HHSC Guardianship receives a referral the guardianship specialist:

- Performs an assessment to determine if the individual has diminished capacity
- Identifies less restrictive alternatives to guardianship
- Seeks to identify other individuals or organizations that are willing, able, and appropriate to serve as guardian



TEXAS  
Health and Human  
Services

# Guardianship 101 (9 of 18)

---

## A Basic Introduction

### Less Restrictive Alternatives to Guardianship

- Voluntary Services (services the client agrees to receive ):
  - Nursing home placement,
  - In-home attendant care,
  - Home-delivered meals,
  - Case management, and
  - Assistance from family and friends
- Representative Payee: to manage a government benefits



TEXAS  
Health and Human  
Services

# Guardianship 101 (10 of 18)

---

## A Basic Introduction

If HHSC Guardianship is appropriate the guardianship specialist:

- Consults with agency attorney to prepare application for guardianship
- Files application, ensures that all appropriate individuals receive notice of guardianship hearing when set
- Testifies at guardianship hearing and completes appropriate subsequent steps



**TEXAS**  
Health and Human  
Services

# Guardianship 101 (11 of 18)

---

## A Basic Introduction

If HHSC Guardianship is not appropriate, the guardianship specialist or the supervisor:

- Notifies APS or CPS of the assessment results
- Offers appropriate recommendations regarding steps which may be considered by APS in the service delivery stage or by CPS prior to the end of the Conservatorship



TEXAS  
Health and Human  
Services

# Guardianship 101 (12 of 18)

---

## A Basic Introduction

Guardianship Responsibilities include, but are not limited to:

- Providing services for adults with diminished capacity that otherwise qualify for guardianship services under the laws of the state of Texas
- Arranging for placement in facilities, such as long-term care facilities, hospitals or foster homes
- Managing estates
- Making medical decisions



TEXAS  
Health and Human  
Services



TEXAS  
Health and Human  
Services

# Community Referrals

---

**How does it work?**

# Guardianship 101 (13 of 18)

---

## Community Referrals

- An information letter can be sent to the local probate court about a person believed to be incapacitated.
- The court will appoint a guardian ad litem or court investigator to determine if guardianship is appropriate and will process an application as appropriate.

**Texas Estates Code §1102.001, 1102.004**



**TEXAS**  
Health and Human  
Services



# Guardianship 101 (14 of 18)

---

## Community Referrals

### The information letter should:

- Include the name, address, telephone number, county of residence, and date of birth of the person
- State whether the residence of the person is a private residence, health care facility, or other type of residence
- Describe the relationship between yourself and the proposed ward

**Texas Estates Code §1102.001, 1102.004**



**TEXAS**  
Health and Human  
Services

# Guardianship 101 (15 of 18)

---

## Community Referrals

### The information letter should (cont.):

- Contain the names and telephone numbers of any known friends and relatives of the person
- State whether a guardian of the person or estate of the person has been appointed in this state
- State whether the person has executed a power of attorney and, if so, the designee's name, address, and telephone number

**Texas Estates Code §1102.001, 1102.004**



**TEXAS**  
Health and Human  
Services

# Guardianship 101 (16 of 18)

---

## Community Referrals

### The information letter should (cont.):

- Describe any property of the person, including the estimated value of that property
- List any amount and source of monthly income of the person
- Describe the nature and degree of the person's alleged incapacity and include a statement of whether the person is in imminent danger of serious impairment to the person's physical health, safety, or estate

**Texas Estates Code §1102.001, 1102.004**



**TEXAS**  
Health and Human  
Services

# Guardianship 101 (17 of 18)

---

## Internet Resources

- National Guardianship Association:  
[www.guardianship.org](http://www.guardianship.org)
- Judicial Branch Certification Commission:  
<http://www.txcourts.gov/jbcc/>
- Texas Health and Human Services:  
<https://hhs.texas.gov/laws-regulations/legal-information/protecting-texans-rights/guardianship>
- Guardianship Certification Advisory Board:  
<https://www.txdirectory.com/online/abc/detail.php?id=395>





TEXAS  
Health and Human  
Services

# Guardianship 101 (18 of 18)

---

**Question and Answers**