A Texas Guide to Adult Guardianship

TEXAS
Health and Human Services

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ABOUT THIS GUIDE

A Texas Guide to Adult Guardianship

With this guide, gain a better understanding of the ins and outs of guardianship.

This guide will help answer these questions:

- What is guardianship?
- What can guardianship do and how will it help?
- What are the limitations of guardianship?
- What are the alternatives to guardianship?
- Who can be a guardian?

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Guardianship

A relationship established by a court of law between a person who needs help (ward) and a person or entity named to help the person in need (guardian).

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INTRODUCTION TO GUARDIANSHIP

Sometimes, due to the effects of aging, disease or injury, people need help managing some or all of their daily affairs.

One way of doing this is the establishment of a guardianship. A guardianship is a relationship established by a court of law between the person who needs help (called a ward) and the person or entity (called a guardian) named by the court to help the ward.

This guide examines the responsibilities, tasks and limits of a guardian and suggests alternatives to guardianship. It covers general aspects of guardianship and provides information specific to Texas. The guide addresses only adult guardianship and does not cover guardianship of minors.

Since guardianship affects a person's rights, it is important to know the implications of guardianship and explore other alternatives and choices before taking steps to have one established. The information in this guide is provided to help you decide which answer — guardianship or another option — is the best.

Some people need a guardian for their entire adult life because of long-term disabilities, while others may need a guardian as a result of a brain injury or other traumatic event. Still others may need a guardian as age and health problems affect their ability to provide for themselves. In many cases, once a guardian is appointed, the guardianship becomes permanent. There are some exceptions, particularly when circumstances change and a guardianship is no longer needed.

About guardians

Guardian and *ward* are legal terms used to indicate the relationship between someone who protects another (the guardian) and the person being protected (the ward). In Texas, a person does not have a guardian until an application to appoint one is filed with a court, a hearing is held and a judge appoints a guardian. When the court appointment is made, the person the guardian cares for becomes a ward of the court. Individuals, entities or guardianship programs can be appointed guardians.

Guardians have legal responsibilities and are required to perform certain tasks when providing assistance to their wards. The court decides whether to place limitations on a guardian's authority. The court also establishes how much freedom wards have to make their own decisions. The court looks at the individuals and programs willing to be guardians and bases the appointment of guardians on several factors:

- Preference is given to appointing family as guardian rather than guardianship programs or the Texas Health and Human Services Commission (HHSC).
- The court may disqualify any person or program from being named guardian.
- Certain criminal convictions are grounds for disqualifying a potential guardian.
- Owing money to or otherwise being indebted to the proposed ward is grounds to disqualify a prospective guardian unless the debt is repaid before appointment.

Pros and cons of guardianship

The chart below lists some of the benefits and disadvantages of establishing a guardianship. It is not meant to be an all-inclusive list but is presented to highlight relevant information.

PROS	CONS
Guardianship protects vulnerable people from those who would abuse, neglect or exploit them.	Guardianship is the most restrictive action taken to protect a vulnerable person.
Guardians support their wards by helping them handle their personal or business affairs and sometimes both.	Wards can lose many or most of their basic rights, depending on the type of guardianship established.
Guardians advocate for their wards, either make decisions for them or help them make decisions, including: • Where they will live. • Medical treatments they will receive. • Who has access to the ward.	Family members may no longer be involved in decision-making if they are not appointed guardian. They may no longer have unlimited access to the ward.
Guardianship is a legal process, requiring the services of an attorney, which is designed to provide maximum protection to a person.	Establishing a guardianship requires the services of an attorney and can be time consuming and expensive.

PROS	CONS
When a guardianship is established, the protected person becomes a ward of the court. Reports or accountings to the court are required annually or sometimes more frequently. New letters of guardianship are required annually.	Annual accounts require the assistance of an attorney. If the ward has sufficient funds, the legal fees may be reimbursed and court costs may be paid from the ward's estate. However, if the ward does not have adequate funds, the guardian may have to pay the fees, seek low-cost or free assistance, or seek payment from the court under certain conditions. The guardian may also pay or seek a waiver of the court costs under certain conditions. Annual reports of the person do not require the services of an attorney.
A proposed ward must be examined by a physician who furnishes the court a written letter or certificate of medical examination (CME) addressing the person's alleged incapacity. A document indicating a diagnosis of intellectual disability (subject to the requirements in statute) may be submitted to the court in appropriate cases.	The proposed ward might not cooperate with obtaining a capacity assessment. In those cases, a court order may be required to obtain one.

PROS	CONS
The letters of guardianship expire if they are not renewed annually (they expire one year and four months after issuance).	If the letters of guardianship are not renewed as required, the guardian loses authority to act and the court may remove the guardian.
Terminating or modifying a guardianship is a legal process requiring the services of an attorney involving a court hearing and requiring enough evidence to show (called a ***preponderance of evidence***) that the changes are best for the welfare of the ward.	Once a guardian is appointed, terminating or modifying a guardianship (other than by death of the ward) requires the services of an attorney and a court hearing.

ESSENTIAL POINTS ABOUT TEXAS GUARDIANSHIPS

Guardianship will not fix all of a person's problems. Responsibilities and limitations applicable to guardians and guardianship are discussed below.

Responsibilities of a guardian or guardianship

A guardian:

- Must meet the legal responsibilities established by the court, which may, depending on the type and limitation of guardianship, include:
- Paying the ward's bills.
- Making decisions about, and maintaining, the ward's assets to the greatest extent possible.
- Ensuring the ward's medical and living needs are met to the extent allowed by the ward's funds and resources.
- Is responsible for filing annual reports or accountings with the court appointing the guardian.
- Is required to ask for the court's permission and approval for many of the actions he or she will take.

Limitations of a guardian or guardianship

A guardian:

- Cannot prevent a ward from making bad decisions and choices.
- Is not responsible for bad decisions and choices the ward may make or for illegal acts they may commit.

- Is not responsible for personally funding the ward's living expenses or for the ward's past debt.
- Cannot use force to make a ward take medication.
- Does not personally supervise the ward around the clock.
- Cannot place a ward in a mental health facility.

Is guardianship the best choice?

Because having a guardian takes away a person's rights, it should be the last and the best available choice. Before deciding to seek a guardianship, you should examine all other options or alternatives. In certain situations, guardianship is the best choice. However, you should first look at other options and rule out less restrictive alternatives that may allow the person being protected to maintain some or all of their independence. Consider the following before making the choice:

- Is a less restrictive alternative available? Has another option been tried but was unsuccessful? If so, might it possibly work now?
- What alternative resources are available to support a less restrictive alternative?
- Is the person in question unable to make his or her own decisions or to provide for himself or herself?
- Is this person nonverbal, unable to communicate with caregivers and unable to make responsible decisions?
- Is a surrogate decision-maker or agent under a power of attorney available to make decisions for the person?

ALTERNATIVES TO GUARDIANSHIP

Choosing an alternative to guardianship has advantages and disadvantages. An alternative encourages people to be independent, allows them to keep some or all of their rights, and helps them retain a sense of dignity and purpose. Additionally, choosing an alternative may delay or prevent the need for a guardian.

Possible alternatives to guardianship include:

- Finding someone who will act as a supported decision-maker to help the person with disabilities.
- Finding someone who will help pay bills and manage the person's money. Money management programs are available in parts of Texas.
- Establishing joint checking accounts.
- Designating a representative payee to receive the person's government benefits.
- Helping the person designate someone to make decisions for him or her when needed. Documents used to do so may include a living will, a medical power of attorney or a durable power of attorney. An attorney may identify other possibilities, such as establishing a trust fund for the person's money.

- Helping the person identify a surrogate decision-maker willing to make health care decisions as allowed by law in certain circumstances.
- Finding and accessing available community services, such as home-delivered meals, transportation services and special services for people with disabilities.
- Helping the person establish 24-hour shared attendant care and emergency response services if available in the area.
- Accessing community-based Medicaid waiver programs the person is eligible for, such as:
  - Home and Community-based Services
  - Texas Home Living
  - Community First Choice
  - Community Living Assistance and Support Services
  - Deaf-Blind Multiple Disabilities
  - Medically Dependent Children Program
- Accessing Medicaid entitlement programs, such as:
  - Primary Home Care
  - Community Attendant Services
  - Day Activity and Health Services
- Finding out if the person is eligible for Medicaid Hospice and helping to set up hospice.
- Locating an assisted living, nursing facility or intermediate care facility for individuals with ID (ICF/IID).
- Finding services available through the local area agency on aging for people 60 and older, their families and other caregivers.

DOES KATHY NEED GUARDIANSHIP?

On her next birthday, Kathy will turn 75. Her husband, Benjamin, will soon be 80. Benjamin, who has cancer and can no longer take care of their business affairs, has repeatedly assured Kathy they have plenty of money. Kathy has never worked or handled any of their money. Despite Benjamin's reassurances, she is distressed and overwhelmed.

Gordon, Benjamin's long-time friend, offered to help them out. Kathy was grateful and gave him access to their bank accounts. But Gordon did not pay their bills, and the utilities were cut off. When Kathy tried to pay, her checks bounced. When she checked with the bank, she was told that her checking account was overdrawn. The bank informed her Gordon had written several large checks. Kathy is scared and knows she needs help.

Alternative: money management program

Kathy definitely needs help to manage her money and to determine if she and Benjamin were financially exploited by Gordon. If they were exploited, an investigation by Adult Protective Services (APS) may be requested. Kathy can also contact the local area agency on aging (AAA) to see if a money management program is available to sort out their financial affairs. Guardianship most likely will not be needed once this couple has supports in place to help them manage their money. Kathy may also find other resources through the AAA which will support her as a caregiver for her husband.

THE BEST CHOICE FOR LILLIAN

Last year, Lillian fell and broke her hip. A friend found her lying on the floor three days later. By the time she got to the hospital, she was confused and weak. After being in the hospital for two weeks, she was sent to a nursing facility. Lillian did not want to stay there and wanted to go home.

However, medical providers and social workers told her she needed to have someone check on her frequently and help with medications and her physical needs. Lillian's daughter lives in another state and offered her a home, but Lillian does not want to move. Lillian and her daughter asked the social worker if there was another option instead of a nursing facility. Several resources for alternative living settings were suggested.

Alternative: assisted living placement

Lillian and her daughter talked about the situation and agreed Lillian could not go home safely. Lillian's daughter located an assisted living retirement community. Someone now checks on Lillian daily and often more frequently. Lillian is happy and relieved she does not have to worry about being left alone for days if she is sick or hurt. She says the best thing is having her own furniture and possessions, including her beloved cat, Sissy.

Is supported decision-making a viable alternative to guardianship?

There are many alternatives that may prevent guardianship from being necessary. In 2015, the Texas Legislature passed laws to establish a supported decision-making agreement as an informal alternative to guardianship. Through this agreement, people with disabilities can make their own decisions and remain in charge of their lives. This is done with the support of people who agree to provide on-going assistance to the person. The supporter does not make decisions for the person, but provides support and assistance by making sure the wishes of the person with disabilities are known and carried out. Anyone who wants to establish a supported decision-making agreement should:

1. Choose people they trust to help them make life decisions.
2. Ask them if they are willing to be their supporter.
3. Determine what type of decisions they want help with and be sure the supporter knows what they will be asked to do. The supporter may or may not provide help in all areas.
4. Complete a supported decision making agreement.

This agreement does not have to be completed by an attorney; however, the assistance of an attorney may be beneficial. For more information on this agreement, refer to Disability Rights Texas at 1-800-252-9108, www.disabilityrightstx.org/resources/sdm-ARC, or The Arc of Texas at https://www.thearcoftexas.org/alternatives-to-guardianship/.

A supported decision making agreement can be cancelled by either party at any time.

TEXAS BILL OF RIGHTS

Senate Bill 1882, 84th Texas Legislature, established a bill of rights for wards under guardianship, which contains 26 specific rights for wards. The Rights of Wards can be found in the Texas Estates Code in Subchapter H, Section 1151.351 at www.statutes.legis.state.tx.us/Docs/SDocs/ESTATESCODE.pdf and is included here as an Appendix.

DECISION-MAKING TIME

Make your decision

This list of steps will guide you through the guardianship decision-making process. These steps may help identify a different option or reassure you guardianship is the right decision.

1. Ask yourself why you believe a guardianship is needed. Make a complete list of your reasons and write down why you think guardianship will solve these problems. Be specific. Remember, a guardian cannot protect a ward from making bad choices and cannot use force to make a ward do certain things, such as take medications or refrain from associating with certain people.

2. Make a list of possible community resources, such as day programs, home delivered meals and transportation services.

3. Think of family, friends and members of your place of worship who might be willing to help. Make a list of the support systems in the person's life.

4. Find a person or agency to review your list and help you find contacts in the areas you have identified. They may be able to identify even more resources. A good place to start is your local area agency on aging (AAA) or aging and disability resource center (ADRC). Look for possible resources on the HHSC website at: **hhs.texas.gov/find-adrc**.

5. Ask people or local agencies to create a list of possible options for the person.

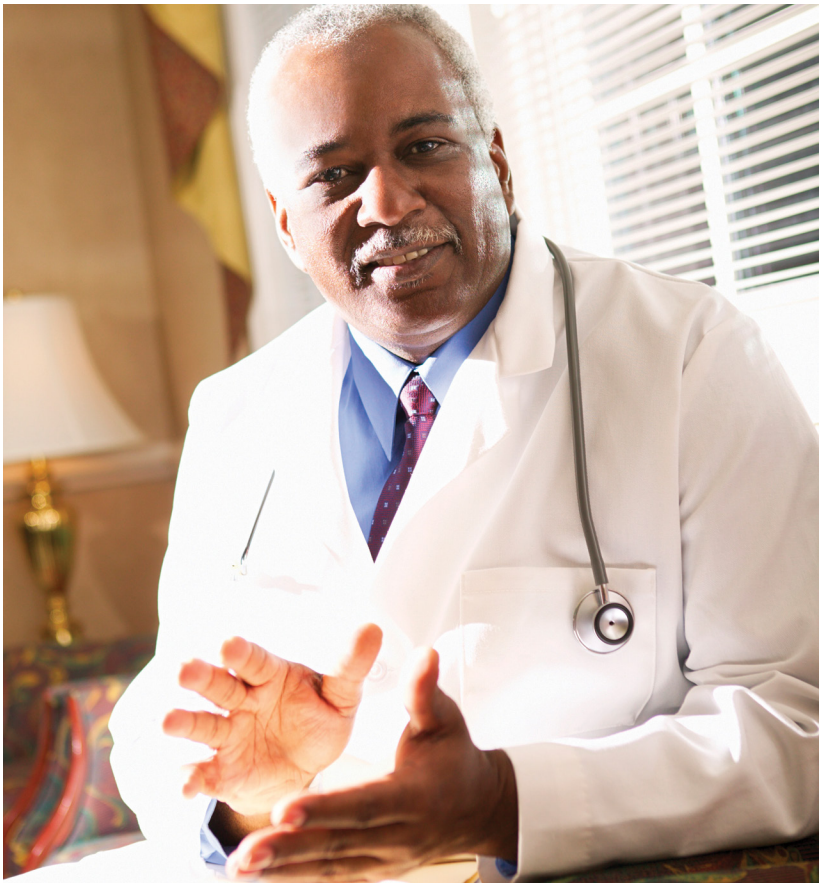
6. Involve family members and friends in your problem solving. Do not be afraid to use people outside the situation as sounding boards. They may have good suggestions.

1. Enlist the help of the person's family or primary care physician as much as you can and involve the person in the process as much as possible.

2. Ask a final question, "Have I done everything possible to allow this person to maintain his or her independence and decision-making powers before I file for guardianship?"

3. If you believe a guardianship is necessary, obtain the services of an attorney licensed by the State Bar of Texas.

4. Do not be afraid to change your mind if the situation changes or you identify new options.



BE PREPARED – GUARDIANSHIP IS NOT AN EASY ANSWER

Guardianship is not an easy, quick or inexpensive process. It requires the services of a licensed attorney because it involves a legal action against the person in question, which may result in a loss of their rights. Be prepared for the person to resent your actions and possibly become quite angry. People who have been self-supporting and self-sufficient seldom recognize decline in their mental or physical state. They seldom know or admit when they need a guardian or help with handling their affairs.

The legal process of guardianship will require you to go to court and, most likely, testify. If a guardian of the estate is appointed, a bond is required. The guardian can ask the court for reimbursement from the person's estate for legal fees and the cost of the bond. In the case of *guardian of the person* only (see page 18), the court may authorize the estate to pay for the cost of guardianship (e.g., attorney fees, bonds) if the ward has adequate funds.

The court will require a certificate of medical examination (CME) or a document establishing intellectual disability, depending on the type of alleged incapacity. If the proposed ward will not willingly see a licensed physician, the court may order him or her to do so. As part of the evaluation process, the physician answers specific questions about the person's mental and physical capabilities. The physician gives his or her professional opinion about whether the person has capacity to make his or her own decisions, vote, drive, marry and carry out other specific activities.

Once a guardian is appointed, there are ongoing legal requirements which may require the assistance of an attorney. A guardian must file annual reports or accountings with a court depending on the type of guardianship. There is a cost to obtain required bonds from a private bonding company.

If guardianship is your choice

If, after considering all options, you decide guardianship is the best choice, you now need to determine what type of guardianship best addresses the situation. The first decision you must make is to retain an attorney to represent you. Your attorney should ask the court to appoint a guardian with only those powers or duties necessary to protect the person. Once a petition for guardianship is filed, it becomes the court's decision whether to appoint a guardian and if so, whether to appoint a full or limited guardian. Establishing a guardianship also requires a written opinion from a doctor — often the person's primary care physician or a physician specialist — indicating the person in question lacks the capacity to make his or her own decisions. A court will make a determination if, because of a mental or physical condition, the person is substantially unable to manage their personal or financial affairs. Strongly consider these options:

- Filing for, or asking the court to appoint, a limited guardianship so the person maintains maximum independence yet gains the protection of a guardian.
- Asking the court to modify a limited guardianship if the situation continues to deteriorate.
- Asking the court to restore some or all of the ward's rights if the conditions and circumstances improve.

TYPES OF GUARDIANSHIPS

There are different types of guardianships available in Texas. They are:

- Guardian of the person, full or limited
- Guardian of the estate, full or limited
- Guardian of the person and estate
- Temporary guardianship

The different types of guardianship are discussed on the following pages. This information may help you decide what type of guardianship is appropriate.

Guardian of the person

As a *full guardian* of the person, you have the legal right and the responsibility to make all personal decisions for the ward.

The guardian decides:

- Where the ward will live.
- Whether to limit contact with family and friends.
- What medical or psychological treatment the ward will receive.
- Where the ward can go.

What personal rights the ward will have (e.g., drive a car, have a cell phone, date) within the limitations of the court order.

GREG'S STORY

Greg suffered a closed-head injury in a motorcycle accident several years ago. He has problems making decisions and remembering to take his medications. Greg also has anger issues. Until recently, Greg's mother was taking care of him; however, she became sick and cannot care for him anymore. The money Greg received from his accident is in a trust.

Greg's guardian, Kevin, helps him make decisions, such as what to buy and how much money to spend. Kevin ensures Greg gets medical care and also found a great place for him to live, where he receives help with his medications. Kevin also arranged for Greg to work with someone on his anger issues. Because Greg has a guardian, he has his own apartment and can do a lot of things for himself. He retained much of his independence.

As a *limited guardian* of the person, the guardian does not make all the ward's decisions. For example, the court may make the guardian responsible for deciding what medical care the ward will receive, or where the ward will live, but the court may let the ward make his or her own decisions about getting married, voting or driving. In a limited guardianship, the judge says what decisions the ward can make and states the ward's rights in the written guardianship orders. In a full guardianship of the person, the guardian has authority over all aspects of the ward's care.

Guardian of the estate

As a guardian of the estate, you have the legal right and responsibility to handle all of the ward's money and other financial affairs; however, you are not personally responsible for the ward's debts just because you are guardian of the estate. The ward's money is used to pay their bills.

The guardian decides (with court approval):

- What should be done with the ward's property.
- Which bills to pay and when.
- How to invest the ward's money.
- Whether or not to enter into a contract to buy or sell property.

Even if a ward previously made a will leaving property to someone else, as guardian of the estate, you determine if the ward still needs this property or the proceeds from the sale. If the ward needs money to pay bills and cover living expenses, then you may, with court approval, have to sell or dispose of their property and other belongings — including things the ward may have previously promised to others. This decision may anger others who thought they would inherit the ward's belongings and property. You should tell the judge about the ward's will and any promises made to other people. If and when the court agrees the property needs to be sold, you may then sell it and use the money for the ward's care and bills.

As a limited guardian of the estate, the court says you are responsible for handling most, but not all, of the ward's financial affairs. The court may allow the ward to make many of his or her own decisions. For example, the court may allow the ward to decide whether to keep or sell property, yet require you to routinely pay the ward's bills. In a full guardianship of the estate, the guardian has authority over all aspects of the ward's estate.

CLAUDE'S STORY

Claude, age 78, is a veteran who is experiencing memory problems and forgetting how to do things. Claude's wife, Jean, died a few years ago and since then, he has struggled to take care of himself and his finances. Until recently, Claude's grandson Tommy was living with him and helping him out.

Claude thought everything was going fine until he discovered Tommy was not paying his bills and was spending his grandfather's money on himself. Claude almost lost his house because the payments were not made. He asked a friend for help. The friend became concerned and made a report to APS. When APS investigated, they determined Tommy had exploited his grandfather by taking a large sum of money. APS made a guardianship referral to HHSC, and the agency assessed Claude to determine if he was appropriate for guardianship. The assessment indicated Claude needed help to manage his financial affairs and to protect him from further exploitation. HHSC filed a petition asking the court to appoint the agency guardian.

At the court hearing, the judge found Claude to have sufficient capacity to make his own medical and personal decisions. However, the judge appointed HHSC to be guardian of Claude's estate. HHSC took over paying Claude's bills and worked out a payment plan with the mortgage company. Claude can still make most of his own decisions. He no longer worries about someone taking all his money. Claude knows his bills are being paid every month.

EVELYN'S STORY

Evelyn and her husband, Spencer, were in a car accident four years ago and Spencer died as a result of his injuries. The wreck left Evelyn with physical trauma, including head injuries. Evelyn now has problems remembering important information and needs someone to help her. She needs help remembering to take her medications, getting to the doctor and taking care of daily activities. Evelyn does not remember how to pay her bills. She does not know how much money she has, nor can she remember how she spent it. In fact, Evelyn gets extremely anxious if she has to handle money at all.

Evelyn was awarded enough money in an insurance settlement to take care of her for the rest of her life. A judge made sure the money was put in a trust and appointed a family member to be her guardian of the person and estate. This relieved many of Evelyn's anxieties and she is coping better with her physical limitations. Evelyn is very grateful she doesn't have to worry about what is going to happen to her in the future.

Guardian of the person and estate

A court may appoint someone to be both guardian of the person and of the estate. If this happens, the guardian has the rights and responsibilities established by the court. Those duties include the duties listed under the previous items, guardian of the person and guardian of the estate (pages 18–21) of this guide. In a full guardianship of the person and the estate, the guardian has authority over all aspects of the ward's care and estate.

Temporary guardianship

Circumstances sometimes require immediate action to protect a person or their estate or both. A temporary guardianship may be used to address imminent danger and will sometimes resolve the problems. At other times, a permanent guardianship is the appropriate answer.

Temporary guardians have the authority to handle specific circumstances. In Texas, a temporary guardianship is in effect for 60 days from the date it is established, unless it is contested in court. Before deciding if a temporary guardian is needed, the court ensures certain legal requirements are met, including:

- Substantial evidence the person in question may be incapacitated.
- Imminent danger to the person or the person's estate.
- Probable cause indicating the person in question or the person's estate requires an immediate appointment of a guardian.

A temporary guardianship is not a finding of permanent incapacity. If the temporary guardianship does not resolve the problems, you may apply for a permanent guardianship. Following are two examples of the use of a temporary guardianship.

CASEY'S STORY

Sixty-five year old Casey works full-time and enjoys an active life. A few months ago, he became ill and experienced mental confusion. Casey says he just could not think straight. His family tried to help him but he would not let them take him to the doctor. One day, Casey collapsed and ended up in the emergency room. He refused treatment and returned home without receiving medical care. As his health declined, Casey became unable to work and handle his affairs. A concerned party made a referral to APS.

After determining Casey was suffering from self-neglect, APS made a guardianship referral to HHSC. A HHSC guardianship assessment showed Casey needed assistance. HHSC filed an application to be appointed Casey's temporary guardian. At the hearing, which Casey attended, the court appointed HHSC as temporary guardian. HHSC ensured Casey received medical treatment and took care of his other affairs. Within two months, Casey's health improved and his confusion cleared up. Casey was able to resume making his own decisions and returned to work. HHSC did not file an application for a permanent guardianship and the temporary guardianship was allowed to expire. This incident served as a wake-up call for Casey. He gave his daughter the legal right to make medical and financial decisions for him if something like this were to occur in the future.

MITCH'S STORY

Mitch, age 62, has a disability and requires treatment for several serious medical conditions. Sometimes his physical condition interferes with his ability to make medical decisions. When Mitch's physical condition worsens, his bills often do not get paid. The last time Mitch was in the hospital for several weeks, he was evicted from his apartment. Mitch recognized he needed help. The hospital social worker discussed the possibility of a guardian with Mitch. He did not want a permanent guardian, so he asked his sister Brenda to help him.

Brenda consulted with an attorney once Mitch became receptive to the idea of receiving help from her. She sought a temporary guardianship, which gave her the authority to resolve Mitch's most urgent problems. With those problems resolved, the temporary guardianship was allowed to expire. When Mitch's condition improved, he gave Brenda power of attorney and signature authority on his bank accounts so she could handle his affairs when he is unable to do so. Now, when Mitch is ill and unable to make decisions or pay his bills, Brenda takes over for him.

The temporary guardianship allowed Mitch's case to stabilize and gave an opportunity to establish protections for him. With Brenda's assistance, a permanent guardianship was avoided. As Mitch says, "When I am out of the hospital and doing OK, I can take care of myself and handle my own money. I want to be as independent as possible."

TANISHA'S STORY

Tanisha, 28, has lived in a state supported living center for the past 10 years but she has an opportunity to move to an intermediate care facility (ICF/IID). Tanisha's brother and a sister are interested in helping her make decisions, but her brother is concerned about this responsibility. Both siblings want to know what would happen if making Tanisha's decisions becomes too much for them.

Tanisha's brother or sister may serve in the role of a surrogate decision-maker for her once she is in the ICF/IID. Should they later decide not to make her medical decisions, the ICF/IID may request a volunteer committee to do so. The availability of a surrogate decision maker may negate the need for a guardian.

Surrogate decision-maker

Texas law allows someone without a legal guardian to have a family member serve as a surrogate decision-maker in certain settings. A surrogate decision-maker is different than a guardian. Becoming a guardian results from a legal process where the court appoints the guardian while becoming a surrogate decision-maker does not require court action as long as certain criteria established in the law are met.

The Surrogate Decision-Making Program (SDMP) managed by Texas Health and Human Services Commission is a legislatively mandated program that allows a family member or a committee of trained volunteers to make decisions for people with intellectual and developmental disabilities who lack capacity to make certain treatment decisions for themselves and have no legal guardian. The program serves people who receive services through the intermediate care facility for individuals with ID or related conditions (ICF/IID) program.

CHANGING OR ENDING GUARDIANSHIPS

Modification and restoration are the two types of legal actions approved by a court that change an existing guardianship. If a person's rights are restored, then the guardianship is ended, or terminated. If the powers of guardianship are increased or decreased, the guardianship is modified. Termination of a guardianship can occur as a result of restoration or other event such as the death of a ward. More information is provided below about the legal actions and termination of a guardianship.

Modification

When a ward's condition improves or deteriorates, the ward or another interested party may request the court to modify an existing guardianship order. For example, if someone's mental condition improves sufficiently to allow them to manage some funds, a modification may be warranted. This modification may allow them to manage a set amount of money although they still have a guardian. When it seems appropriate, the ward or another interested person may file an application with the court asking for a modification. The court may also modify the guardianship on its own. The ward can send an informal letter to the court instead of filing an application. No one should interfere with or prevent the ward from sending this letter to the court.

Restoration

There are times when a guardianship is no longer necessary because the ward's condition and circumstances significantly improve. At other times, the ward may believe he or she no longer needs a guardian. In either of these circumstances, the ward or another interested person may file an application with the court asking for the ward's rights to be restored, or

the court may restore the ward's rights on its own. As with modification, the ward can send the court an informal letter requesting restoration of their rights instead of filing an application. It is important no one interferes with or prevents the ward from sending such a letter to the court.

Before a guardian is appointed, there is a legal requirement to furnish *clear and convincing evidence* of incapacity. However, when restoring a person's rights, the law does not require the same level of evidence. Instead, the law requires a *preponderance of evidence* for restoration, which is a lower level of proof. The ward has the right to be present for any hearing to create a guardianship, modify a guardianship or to restore rights.

Termination

A guardianship can be terminated because of changing conditions and circumstances. As previously indicated, when a ward's rights are restored, the guardianship is terminated. In other cases, a guardianship may no longer be necessary as the problems have resolved themselves. In others, the ward may have died. Depending on the type of guardianship, the guardian is (or may be) responsible for making funeral arrangements, distributing or disposing of property, and completing legal duties relating to filing a final report and/or final account as required by law. Anytime a ward's rights are restored or the ward dies, the former guardian is no longer responsible for handling the ward's affairs beyond those final duties required by law. Consult with an attorney to determine what types of actions need to be taken.

An individual guardian's role ends or terminates if a successor guardian is appointed. The guardianship continues, but with a new guardian. Anytime a successor is appointed and qualifies, the former guardian is no longer responsible for handling the ward's affairs beyond those final duties required by law.

HHSC GUARDIANSHIP SERVICES PROGRAM

The Texas Health and Human Services Commission (HHSC) has a Guardianship Services program. People served by this program are referred by the Adult Protective Services (APS) or Child Protective Services (CPS) divisions of the Texas Department of Family and Protective Services (DFPS). In certain limited circumstances, courts may make direct requests to the HHSC program.

To be referred by APS to HHSC for guardianship, the person must either be an adult with a disability, or be 65 or older and a victim of abuse, neglect, including self-neglect, or exploitation. CPS referrals are minors in CPS conservatorship (which ends at adulthood) who appear to meet the adult definition of incapacity. Before filing an application for guardianship, HHSC will:

- Review the case file and referral information furnished by APS or CPS or the court.
- Complete a full and detailed guardianship assessment of the person's conditions and circumstances.
- Look for less restrictive alternatives and alternate guardians.
- Ensure the person has a source of funds to pay for their care.
- Obtain a CME or a document establishing intellectual disability depending on the type of alleged incapacity.
- Determine if guardianship is the right course of action and will resolve the person's problems and protect him or her.

SITUATIONS, QUESTIONS AND ANSWERS

General guardianship

Situation 1:

My sister keeps taking drugs and making horrible choices. She has been arrested several times. I am thinking about applying to become her guardian so I can control her money and her choice of companions. What type of guardianship should I seek?

> ***Answer:*** *Being your sister's guardian will not stop her from taking drugs. You cannot keep her from breaking the law. Unless she is in a controlled environment, she may continue to hang around with bad companions. As guardian of the estate you would control her money, and not having access to money to support her drug habits may increase her criminal activity. As guardian of the person, you may determine where she lives, but it is very difficult to keep an adult from running away. You may seek treatment for her, but you cannot force an adult to undergo treatment. For most addicts, voluntary treatment for addiction is the only option unless a court orders drug rehabilitation treatment. You may want to consider asking a court to do so. If so, contact an attorney to discuss this and other options. You can also contact the Texas Department of State Health Services (DSHS) at www.dshs.texas.gov/substance-abuse for additional information about substance abuse.*

Situation 2:

A private professional guardian was appointed for my uncle. The guardian will not allow family members to visit him. We do not believe the guardian is taking care of him. We want to have our uncle moved closer to us so we can visit and be involved with him, as we are his only family. Who can we complain to?

> ***Answer:*** *Try expressing your concerns to the guardian. Ask him or her to allow you to visit and to allow your uncle to be moved closer to you. You may also ask the guardian to allow*

you to be designated successor guardian. If talking with the guardian is not an option, then contact the court which created the guardianship and express your concerns. You may also want to consider contacting an attorney to discuss your options and see if you can be appointed guardian for your uncle.

Private professional guardians are certified by the Judicial Branch Certification Commission. If you have unresolved complaints about the guardian, you can contact the commission. If you are concerned about the treatment of an older Texan or someone with a disability, you can call 1-800-458-9858 to contact HHSC Consumer Rights and Services. Employees of Consumer Rights and Services take complaints about the treatment of people who receive services in long-term care facilities or in their homes. They also take incident reports from long-term care service providers. They can answer your questions about HHSC programs and services. If you believe a guardian has abused, neglected or exploited a ward in the community, call 1-800-252-5400 to make a report to APS.

Situation 3:

My friend's guardian recently died. I know my friend is not getting to her medical appointments, and I worry about what is happening to her. What happens now? Who becomes the guardian? Is there anything I can do to help her?

Answer: *Until a new guardian is appointed, there is no one to make decisions for your friend. You, or anyone else who is concerned about her, should notify the court of the guardian's death. This can be done by calling or writing to the court that created the guardianship. If you do not know which court, contact the court in the county where your friend lives and, if possible, provide the name of her guardian and the date the guardian was appointed. Another option is to contact APS if you believe your friend, who is living in the community, is experiencing neglect (including self-neglect). They can investigate and determine what needs to be done.*

You can make a confidential report by phone to the Texas Abuse Hotline at 1-800-252-5400 or go to txabusehotline.org to make a report.

Situation 4:

My mother has schizophrenia and is off her medication. She needs to be committed to a state hospital. If I become her guardian, can I commit her for treatment?

Answer:

A guardian cannot commit someone to a mental health facility for treatment without following the same mental health court commitment process used for people without guardians. Guardianship and mental health commitment are two separate legal proceedings and may be determined in different courts or the same court. As an interested party, you can file a sworn written application asking the mental health court to order mental health services for your mother without having to become the guardian. If you do file this type of application, you must include written information from a physician regarding your mother's mental illness and evidence of your mother being a danger to herself or others.

Other options are for you to ask the county or district attorney or other adult to file the sworn written application or you can contact law enforcement assigned to mental health matters. If they agree with the need for your mother to receive evaluation or treatment, they can take the necessary legal steps without your involvement. When your mother is responding well to treatment, ask her to specify her treatment preferences by executing a declaration for mental health treatment before the need for treatment arises again.

Situation 5:

My father needs a guardian, and I am willing to help him. If I become his guardian, am I responsible for his debts? Also, is it expensive to become someone's guardian?

Answer: *Guardians are not personally responsible for their ward's debts unless they agree to be. If you become guardian*

of the estate, you will pay your father's bills using his money. The cost of becoming a guardian varies, depending on the type of guardianship sought, whether or not it is contested, and other factors. If you are appointed guardian, you can ask the court for permission to reimburse yourself for the legal fees from his money if he has sufficient resources.

If you do not have money to file for a guardianship, see if you can locate someone to provide free or low-cost legal services (see Legal Services, page 44). You may want to contact your local legal aid society and ask to be referred to an attorney who will work with you. In addition to legal fees, the court will ask you to provide a bond. However, your attorney can ask the judge to work with you on the amount of the bond.

Aging issues

Situation 1:

My mother has Alzheimer's disease. She is increasingly forgetful, and I discovered she has not paid any of her bills. Do I need to obtain a guardianship?

Answer: *A person with Alzheimer's disease will continue to deteriorate. While a guardianship may ultimately be the answer, it may not be the right solution now. Explore all the available alternatives. Talk to your mother about the situation. Find out if she has an advance directive for health care and end-of-life decisions. Find out what she wants to happen. This conversation may be difficult for both of you, but it is necessary. Consider your mother's condition and how fast her disease is progressing. Although your mother has Alzheimer's disease, she may still be able to make decisions. If so, a guardianship may be avoided for a significant time. Only a physician can assess your mother's disease and her capacity. If the physician says her disease has not yet affected her ability to make decisions, you and she may want to discuss with an attorney whether she has*

sufficient capacity to grant you or someone else medical power of attorney and durable power of attorney so her affairs can be managed. You and she may also discuss with the attorney the possibility of selecting a guardian in advance by signing a designation of guardian. Also, discuss whether she has sufficient capacity to allow you to become a joint signatory on the bank accounts. The attorney may speak to your mother separately to confirm her wishes and your involvement.

Situation 2:

I am becoming my mother's guardian. Someone told me I have to become a certified guardian. How do I comply and what is required?

Answer: *You are not required to become a certified guardian. In 2005, the Texas Legislature passed a law requiring certain professionals to become certified guardians. Family members, friends, volunteers for programs, certain financial institutions, and attorneys who serve as guardians are exempt from certification provisions. People required to be certified must pass a comprehensive examination and meet other qualifications. They must also pass a criminal history check from both the Texas Department of Public Safety and the Federal Bureau of Investigation. Those required to be certified include private, professional guardians who are not attorneys, employees of local guardianship programs and employees of the Texas Health and Human Services Commission who provide guardianship services.*

Situation 3:

My father is not taking care of himself. He refuses to bathe or shave and is living in filthy conditions. I am also worried about some of his new companions. What does it take to have someone declared incapacitated?

Answer: *In Texas, adults are considered to be incapacitated if, because of a physical or mental condition, they are substantially unable to provide food, clothing or shelter for themselves, care for their physical health, or manage their*

own financial affairs. It is up to a court to determine if a person is incapacitated. A complete definition can be found in Section 1002.17 of the Texas Estates Code.

Sometimes adults decide they are not going to care for themselves and their personal hygiene may decline; this is often a symptom of depression. If your father's physician says he has capacity, there may not be anything you can do at this time. However, if you can get your father to agree to see a psychiatrist, you can ask for a complete mental assessment. Your father may refuse to see a psychiatrist or refuse to cooperate.

If his behavior and mental condition continue to decline and he will not help himself or accept help, or if you continue to be concerned about him, you can contact Adult Protective Services at 1-800-252-5400. They will investigate the situation. If they determine he is neglecting himself, appears to lack capacity or there are other issues, they will work to find a solution. Another option is filing an application for guardianship (temporary or permanent) and asking the court to order a capacity assessment.

Situation 4:
There is a resident in our nursing facility who does not have any family members to make medical decisions for her. Is a guardian needed to make those decisions?

Answer: *A guardian may not be needed, depending on the type of decisions needed and the people available to make those decisions. As long as a person has capacity, people make their own medical decisions. If they have capacity, they can designate an agent to make their medical decisions. The nursing facility may accept their decisions or sometimes may assume consent if the resident does not object. It takes a court to say a person lacks capacity.*

The attending physician, usually with the assistance of a nursing facility social worker, makes a good-faith effort to contact a surrogate decision-maker when a nursing facility

resident is comatose, incapacitated, unable to communicate, there are no known family members, or the family members are no longer involved with the individual. The Texas Health and Safety Code, Chapter 313, Consent to Medical Treatment Act, lists those family members and other persons, including a clergy member, who can act as surrogate decision-makers.

If the situation calls for an end-of-life decision, Chapter 166.088(F) of the Texas Health and Safety Code establishes criteria for two doctors to make the decisions. If you believe a guardian is needed for regular or ongoing decisions, you or another interested person may apply for guardianship or send a letter to a court with probate authority and ask for the appointment of a guardian.

People with intellectual disabilities

Situation 1:

My parents are older and have been caring for my disabled brother. They are concerned about what will happen to him in the future. Do I need to establish a guardianship to provide care for him?

Answer: *Not necessarily. People with disabilities do not automatically need a guardian. Before seeking a guardianship, answer the following questions:*

- *Can your brother communicate his desires and wishes?*
- *Are the decisions he makes in his best interest?*
- *Is there adequate support available from family, friends and the community?*
- *Is he being served by government programs?*
- *What problems will a guardianship resolve?*
- *Are there money or government benefits? Is he capable of managing them and, if not, are there alternatives to manage them for him?*
- *Are there other viable alternatives to guardianship?*

You may want to discuss the options with an attorney. When all other options have been ruled out, you may consider either a limited or full guardianship. Remember, many people with disabilities lead full lives and live independently. Often they are able to make their own decisions — both good and bad.

Situation 2:

My child has severe disabilities. I have always been his caregiver and have cared for him at home. He turned 18 last February. I am being told I have no legal rights to make medical decisions for him or consent to services on his behalf. He is not able to understand what is needed, why it is needed or what the consequences are if he doesn't receive services or medical treatment. He does not communicate in any way and does not have the capacity to make his own decisions. What do I need to do?

Answer: *Explore all resources available to you. If you rule out all other possible alternatives and you believe a guardianship is appropriate, contact an attorney who can help you file an application for guardianship.*

Situation 3:

My sister is a resident of an intermediate care facility for individuals with ID (ICF/IID). Our parents recently passed away. I have been asked to become her guardian. Is this necessary?

Answer: *A surrogate decision-maker may be all that is necessary. A surrogate decision-maker may make medical decisions for residents of ICF/IIDs. Essentially, if a person does not have a parent or a guardian and lacks the capacity to make major medical or dental decisions for themselves, an adult surrogate decision-maker may consent on the person's behalf. As an adult sibling, you are eligible to become the surrogate decision-maker if you meet the legal requirements. More information about surrogate decision-makers can be found in Section 597.041 of the Texas Health and Safety Code (see Tanisha's Story, page 27).*

Situation 4:

My sister, Betty, has moderate developmental disabilities and lives at a state supported living center. She is moving to a home in the community. Does she need a guardian?

Answer: *Many adults with developmental disabilities are capable of making their own decisions, including asking for assistance in decision-making. If she has sufficient decision-making capacity, your sister may not need a guardian. Determine first if she has sufficient capacity to make her own decisions or to ask someone else to assist her. If she does, she can give someone else — perhaps you or another sibling — power of attorney authorizing them to make decisions for her. If she does not have sufficient capacity, then you may want to discuss guardianship with an attorney.*

Situation 5:

My son Jimmy is turning 18. He has moderate development disabilities and problems communicating his wishes to others. However, I can understand him perfectly. I know what he wants for his future. Does he need a guardian?

Answer: *People with mild to moderate developmental disabilities often are able to make their own decisions and choices, but for a multitude of reasons may not be able to communicate their desires or accomplish what is required without assistance. If someone will act as their supported decision-maker, this may prevent the need for a guardian altogether or may delay it indefinitely. A supported decision-making agreement can be canceled by either party at any time.*

ADDITIONAL RESOURCES

Following are more resources for information about guardianship. This list is not exhaustive but is provided as a starting point for learning more about the process of guardianship. Information about guardianship is constantly being updated and an internet search may provide additional resources.

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The **Judicial Branch Certification Commission** certifies and regulates certified guardians in Texas. It is a division of the Office of Court Administration under the Supreme Court. The commission has published standards of practice and rules for certified guardians. The commission maintains an on-line list of certified and provisionally certified guardians.

Judicial Branch Certification Commission
Office of Court Administration
Tom C. Clark Building
P.O. Box 12066
Austin, TX 78711-2066
512-475-4368
www.txcourts.gov/jbcc/

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The **State Bar of Texas** maintains a publication titled ***Protecting the Incapacitated: A Guide to Guardianship in Texas from Application to Oath***. Go to www.texasbar.com and search for "guardianship." The website also has legal services and other resources for people with low income.

The **Texas Guardianship Association** maintains guardianship information on its website.

Texas Guardianship Association
P.O. Box 24037
Waco, TX 76702-4037
Phone: 888-399-9115 (toll free)
Email: tga@texasguardianship.org
www.texasguardianship.org

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The **National Guardianship Association** maintains a website dedicated to guardianship in the United States. The Center for Guardianship Certification administers testing for national guardian registration. It also administers the Texas certification exam under a contract with the Texas Office of Court Administration. The association's website has a list of nationally registered guardians. The website contains other links to educational materials, reports on guardianship and lists of certified guardians.

National Guardianship Association
174 Crestview Drive
Bellefonte, PA 16823
Phone: 1-877-326-5992
Fax: 1-814-355-2452
Email: info@guardianship.org
www.guardianship.org

★★★★★★★★

Center for Guardianship Certification
P.O. Box 5704
Harrisburg, PA 17110
Phone: 1-717-238-4689
Fax: 1-717-238-9985
Email: communications@guardianshipcert.org
www.guardianshipcert.org/

Other resources

The 28 **Texas area agencies on aging** (AAAs) have benefits counselors to help people age 60 and older and their caregivers locate programs and resources. They can prepare powers of attorney in some cases. To find an AAA near you, visit hhs.texas.gov and search for "AAA directory."

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Disability Rights Texas provides information about guardianship for people with disabilities. The organization's website, www.advocacyinc.org/handoutCommServ.cfm contains guardianship-specific information.

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The **Arc of Texas** is the oldest and largest non-profit volunteer organization in the state committed to creating opportunities for people with intellectual and developmental disabilities to be included in their communities and to make the choices which affect their lives.

The Arc of Texas
8001 Center Park Drive, Suite 100
Austin, TX 78754
Phone: 512-454-6694
Email: info@thearcoftexas.org
www.thearcoftexas.org

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Legal services: Several organizations provide lower-cost or free legal services to those who have a significant economic need or who are indigent. Some law schools have legal clinics using law students supervised by a lawyer to assist persons with low income. Organizations that may maintain a list of attorneys who specialize in probate law are included on the list. This list is not all-inclusive but is provided as a resource:

- State Bar of Texas
- Legal Aid Society or Hotline (see TLSC below)
- Local Bar Association
- Lone Star Legal Aid
- Legal Aid of Northwest Texas
- Texas Rio Grande Legal Aid
- Texas Legal Services Center

* * * * * * * *

The **Texas Legal Services Center** (TLSC) operates a legal hotline offering self-help legal advice to Texas residents 60 and older or who receive Medicare. TLSC also has programs to help people with low income or who have been victims of violent crimes gain access to health care. They also help people who have suffered abuse or neglect in residential care facilities, victims of identity theft and people who have problems with pensions. TLSC also refers callers to attorneys who may work for reduced fees.

Texas Legal Services Center
2101 S IH 35
Frontage Rd, Austin, TX 78701
Phone: 512-477-6000
www.tlsc.org

Lawyer Referral Service
Statewide: 800-252-9690
Austin/Travis County: 512-472-8303

Legal resources

Guardianship is a legal process defined in the Texas Estates Code. The estates code reflects the many laws passed by the Texas Legislature to protect adults and minors. The Health and Safety Code contains the laws and forms regarding advance directives, powers of attorney for medical care, written directives and patients' rights. The Government Code and Human Resources Code contain specific laws applicable to state agencies, including HHSC.

You can review the statutes online at www.statutes.legis.state.tx.us or at the Texas State Library and Archives Commission. Resources available range from traditional print material to databases and full public access to the Internet.

Lorenzo de Zavala State Archives and Library
1201 Brazos
PO Box 12927
Austin, TX 78711-2927
Phone: 512-463-5455
reference.desk@tsl.state.tx.us

GLOSSARY

Annual account
A report made to a court by a guardian of the estate covering a specific period related to activity pertinent to the estate within the designated period.

Annual report
A report made yearly to a court by a guardian of the person covering a specified reporting period related to the condition of the ward within the designated period.

Assisted living program
A 24-hour living arrangement providing services, including personal care, home management, escort, social and recreational activities, 24-hour supervision, supervision of, assistance with, and direct administration of medications, and the provision or arrangement of transportation.

Attorney ad litem
A court-appointed lawyer representing the proposed ward during guardianship proceedings. The attorney ad litem advocates for the wishes and desires of the proposed ward.

Bond
An insurance policy required by a court in an amount set by a judge to cover the assets of the estate.

Capacity
Legal qualification, competency, power or fitness. Also, the ability to understand the nature of the effects of one's acts.

Certificate of medical examination (CME)
A document prepared by a physician licensed to practice in Texas who examines a person and assesses his or her mental capacity and capabilities.

Conservator
A legally appointed protector; preserver of a minor.

Decisional capacity
The ability to understand and appreciate the nature and consequences of decisions and to reach and communicate an informed decision in the matter.

Determination of intellectual disability (DID)
An assessment made by a physician or psychologist licensed in the state of Texas based on the measure of a person's intellectual functioning, a determination of the person's adaptive behavior and level, and evidence of origination during the person's developmental period.

Estate
Both real and personal, tangible and intangible, and includes anything subject to ownership.

Estates Code
The law containing the general provisions of guardianship.

Family guardian
Someone appointed for a person to whom he or she is related by blood or marriage. When a family member who has no conflict with the proposed ward is willing and able to serve as guardian, the court prefers to appoint a family member as guardian.

Guardian
Someone appointed by a probate court to protect the property and/or person of one who does not have the capacity to protect his or her own interests.

Guardian ad litem
A disinterested person appointed by the court on behalf of the ward to represent a proposed ward or a ward's best interest.

Guardian of the estate
A guardian who possesses any or all powers and rights with regard to the property of a ward.

Guardian of the person
A guardian who is responsible for and who advocates for the health, well-being and personal needs of a ward.

Guardian with full authority (full guardianship)
Someone appointed by the court to exercise all legal rights and powers of the ward after the court has found the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property. It is the opposite of a limited guardian.

Incapacitated person
An adult who, because of physical or mental conditions, is substantially unable to feed, clothe or shelter himself/herself, to care for his/her physical health, or to manage his/her financial affairs.

Less restrictive alternative
An alternative meant to preserve a person's autonomy or independence.

Letters of guardianship
A certificate issued by the clerk of court to a guardian after appointment and qualification by the guardian that states facts of appointment, qualification, and the date the letters of guardianship expire.

Limited guardian
A guardian appointed by the court to exercise the legal rights and powers specifically designated by a court order entered after the court has found the ward lacks capacity to perform some, but not all, of the tasks necessary to care for his or her person or property.

Oath
A sworn written statement made by the guardian in which he or she swears to fulfill his or her obligation.

Power of attorney
A document appointing someone to act as agent for another person. The agent may be authorized to make medical or financial decisions, depending on the document.

Proposed ward
A person alleged to be incapacitated in a guardianship proceeding.

Supported decision-making agreement
A written agreement between a person with a disability and another who commits to providing support to the person in seeing the individual's wishes are carried out.

Supported decision-maker
A person who has entered into a written agreement with an individual with disabilities to support them in their life's decisions.

Surrogate decision-maker
A person with decision-making capacity who has authority to consent to medical treatment on behalf of an incapacitated patient.

Ward
An incapacitated person who has been placed in the care, custody and supervision of a guardian.

APPENDIX

Texas Estates Code

Title 3. Guardianship And Related Procedures

Subtitle E. Administration Of Guardianship

Chapter 1151. Rights, Powers, And Duties Under Guardianship

Subchapter A. Rights, Powers, And Duties In General

Subchapter H. Rights Of Wards

Sec. 1151.351. BILL OF RIGHTS FOR WARDS.

(a) A ward has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where specifically limited by a court-ordered guardianship or where otherwise lawfully restricted.

(b) Unless limited by a court or otherwise restricted by law, a ward is authorized to the following:

1. to have a copy of the guardianship order and letters of guardianship and contact information for the probate court that issued the order and letters;

2. to have a guardianship that encourages the development or maintenance of maximum self-reliance and independence in the ward with the eventual goal, if possible, of self-sufficiency;

3. to be treated with respect, consideration, and recognition of the ward's dignity and individuality;

4. to reside and receive support services in the most integrated setting, including home-based or other community-based settings, as required by Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.);

5. to consideration of the ward's current and previously stated personal preferences, desires, medical and psychiatric treatment preferences, religious beliefs, living arrangements, and other preferences and opinions;

6. to financial self-determination for all public benefits after essential living expenses and health needs are met and to have access to a monthly personal allowance;

7. to receive timely and appropriate health care and medical treatment that does not violate the ward's rights granted by the constitution and laws of this state and the United States;

8. to exercise full control of all aspects of life not specifically granted by the court to the guardian;

9. to control the ward's personal environment based on the ward's preferences;

10. to complain or raise concerns regarding the guardian or guardianship to the court, including living arrangements, retaliation by the guardian, conflicts of interest between the guardian and service providers, or a violation of any rights under this section;

11. to receive notice in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward, of a court proceeding to continue, modify, or terminate the guardianship and the opportunity to appear before the court to express the ward's preferences and concerns regarding whether the guardianship should be continued, modified, or terminated;

12. to have a court investigator, guardian ad litem, or attorney ad litem appointed by the court to

investigate a complaint received by the court from the ward or any person about the guardianship;

13. to participate in social, religious, and recreational activities, training, employment, education, habilitation, and rehabilitation of the ward's choice in the most integrated setting;

14. to self-determination in the substantial maintenance, disposition, and management of real and personal property after essential living expenses and health needs are met, including the right to receive notice and object about the substantial maintenance, disposition, or management of clothing, furniture, vehicles, and other personal effects;

15. to personal privacy and confidentiality in personal matters, subject to state and federal law;

16. to unimpeded, private, and uncensored communication and visitation with persons of the ward's choice, except that if the guardian determines that certain communication or visitation causes substantial harm to the ward:

    - the guardian may limit, supervise, or restrict communication or visitation, but only to the extent necessary to protect the ward from substantial harm; and

    - the ward may request a hearing to remove any restrictions on communication or visitation imposed by the guardian under Paragraph (A);

17. to petition the court and retain counsel of the ward's choice who holds a certificate required by Subchapter E, Chapter 1054, to represent the ward's interest for capacity restoration, modification of the guardianship, the appointment of a different

guardian, or for other appropriate relief under this subchapter, including a transition to a supported decision-making agreement, except as limited by Section 1054.006;

18. to vote in a public election, marry, and retain a license to operate a motor vehicle, unless restricted by the court;

19. to personal visits from the guardian or the guardian's designee at least once every three months, but more often, if necessary, unless the court orders otherwise;

20. to be informed of the name, address, phone number, and purpose of Disability Rights Texas, an organization whose mission is to protect the rights of, and advocate for, persons with disabilities, and to communicate and meet with representatives of that organization;

21. to be informed of the name, address, phone number, and purpose of an independent living center, an area agency on aging, an aging and disability resource center, and the local mental health and intellectual and developmental disability center, and to communicate and meet with representatives from these agencies and organizations;

22. to be informed of the name, address, phone number, and purpose of the Judicial Branch Certification Commission and the procedure for filing a complaint against a certified guardian;

23. to contact the Department of Family and Protective Services to report abuse, neglect, exploitation, or violation of personal rights without fear of punishment, interference, coercion, or retaliation; and

24. to have the guardian, on appointment and on annual renewal of the guardianship, explain the rights delineated in this subsection in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward.

(c) This section does not supersede or abrogate other remedies existing in law.

Added by Acts 2015, 84th Leg., R.S., Ch. 1225 (S.B. 1882), Sec. 1, eff. June 19, 2015.

NOTES

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Guardianship Services Program

Health, Developmental and Independence Services

The Texas Health and Human Services Commission (HHSC) does not discriminate on the basis of race, color, national origin, sex, age or disability in employment or the provision of services. HHSC is an equal opportunity/affirmative action employer. HHSC welcomes suggestions for changes or additions to this material.

TEXAS
Health and Human Services

16D0724