



Announcements and details regarding guardianship resources and educational events are posted on the TGA's website at www.texasguardianship.org



RESOURCES

National Guardianship Association
www.guardianship.org

Social Security Administration: www.ssa.gov

Judicial Branch Certification Commission
www.txcourts.gov/jbcc

Disability Rights Texas
www.disabilityrightstx.org/en/home

The Arc of Texas: www.thearcoftexas.org

Texas Legal Services Center: www.tlsc.org

Texas Lawyer Referral Service
Statewide: 800-252-9690

State Bar of Texas: www.texasbar.com

Medicaid Texas
www.hhs.texas.gov/services/health/medicaid

Medicare: www.medicare.gov

TEXAS GUARDIANSHIP ASSOCIATION

(TGA) is a non-profit organization dedicated to educating professional, family, and volunteer guardians as well as legislators and the general public on ethics, standards and best practices related to court-appointed guardianships in Texas. TGA is also committed to identifying and implementing less restrictive alternatives to guardianship and reliance on community supports and services whenever feasible. TGA strives to enrich the lives of those protected by guardianship as well as those who are responsible for the protection of others.



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GUARDIANSHIP IN TEXAS



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GUARDIANSHIP IN TEXAS

IS A GUARDIANSHIP REALLY NEEDED?

A guardianship may be needed if there are no Lesser Restrictive Alternatives to the guardianship. The Court will consider alternatives including supports and services to ensure that a person has a way to obtain food, clothing, shelter, medical care, or personally care for or manage financial affairs for him/herself. The investigator will also review a doctor's Independent Medical Examination (IME) or Physician Certificate of Medical Examination (CME) to ensure that a proposed ward is incapacitated.

WHAT ARE LESSER RESTRICTIVE ALTERNATIVES?

Lesser Restrictive Alternatives include viable properly executed documents such as, but not limited to: Durable Power of Attorney, Financial Power of Attorney, Medical Power of Attorney, Directive to Physicians, Joint Bank Account documents, Trust documents, including Special Needs Trusts. These alternatives can also include Supports and Services, which can include, but are limited to: Supportive Decision-Making Agreements, a Representative Payee Agreement, formal and informal resources such as: food banks, transportation assistance programs, legal aid assistance, medical and clinic healthcare, local mental health care, utility assistance, and other programs so that a person can obtain food, shelter, clothing, medical care, or physical care and manage their finances.

WHAT IS A GUARDIANSHIP?

A guardianship is a legal relationship in which a court grants someone, called a guardian, full or limited authority over another person, called a ward, to promote and protect the well-being of that person and/or the person's financial affairs.

WHO CAN REQUEST A GUARDIANSHIP?

Parents can request a guardianship over a minor. Interested persons can request a guardianship over an incapacitated adult. Hospitals, nursing homes, law enforcement, neighbors, churches, and interested persons can all make reports to adult Protective Services (APS) or to a probate court if they believe a person is incapacitated.

WHAT IS CAPACITY?

Capacity describes someone's ability to think about, make, and carry out a decision. In Texas, a physician, licensed psychologist, or a physician-supervised nurse practitioner may assess capacity. This is done by observing and asking questions and doing cognitive and mood testing. Depending on one's answers, abilities, and medical conditions, an individual may be found to have full, partial, or no capacity to make and carry out decisions for themselves, either permanently or temporarily.

WHO IS INCAPACITATED?

A minor is considered to be incapacitated. An adult, who because of a physical or mental condition, is substantially unable to secure food, clothing, shelter, medical care, or physically care for, or manage financial affairs for him/herself is incapacitated. When it comes to the attention of APS, or a Probate Court, these entities have investigators to do an investigation about the person's circumstances.

WHO IS A WARD?

A ward is a person for whom a guardian has been appointed.

WHAT EVIDENCE IS USED IN COURT?

Before a person could be determined to be incapacitated, a doctor will perform a capacity assessment (IME or CME) to determine a person's ability to handle activities of daily living, including managing finances. The examination will be presented to the Court, the doctor may testify.

CAN A PERSON FOUND TO BE INCAPACITATED, REGAIN CAPACITY, AND HAVE RIGHTS RESTORED?

Yes, a person's incapacity may be restored. For instance, if a person suffered a stroke or a traumatic brain injury rendering him/her incapacitated or unconscious but regains decision-making capacity; the Court may find that the ward regains full or partial capacity and restore rights accordingly. If a person under guardianship can show there are Lesser Restrictive Alternatives, and there are now Supports and Services negating the need for guardianship the ward may be restored.

CAN A GUARDIAN BE REPLACED?

Yes, a person under guardianship can inform the court that he/she wants someone else to be the guardian. The court will investigate the situation and can remove a guardian for failing to do their duty. Also, if a guardian passes away or resigns from being the guardian, the Court will investigate the situation, hold another court hearing, and appoint a successor guardian if needed.

DOES TEXAS HAVE SAFEGUARDS OVER A GUARDIAN?

Yes. A guardian must follow the laws of the Texas Estates Code and regulations of the Judicial Branch Certification Commission (JBCC). This includes training for public guardians, private guardians, and family members serving as guardians. There is also a Bill of Rights for Wards, and a guardian must share this information with them. A person under guardianship has the right to file complaints with the JBCC and the Court having continuing jurisdiction over the case.