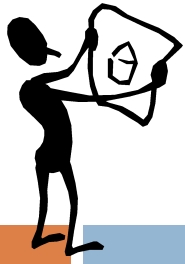


THE PROCESS OF GUARDIANSHIP

RAQUEL LAURETANO, LCSW-S
SENIOR COURT INVESTIGATOR
PROBATE COURT NO. 2



Texas Estates Code.

Sec.1001.001(a)(b)

“A Court may appoint a guardian with either full or limited authority over an incapacitated person as indicated by the incapacitated person’s actual mental or physical limitations and only as necessary to promote and protect the well-being of the incapacitated person. In creating a guardianship that gives a guardian limited authority over an incapacitated person, the Court shall design the guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person, including by presuming that the incapacitated person retains capacity to make personal decisions regarding the person’s residence.”

Less-restrictive alternatives

- Medical Power of Attorney
 - Statutory Durable Power of Attorney
 - Supported Decision-Making Agreement
- Surrogate Decision-Maker (Health & Safety Code)
 - Advanced Directives
 - Emergency Detention Order
- Court Ordered Psychiatric Evaluation (to determine level of capacity)
- Limited Guardianship (retaining certain rights)

Types of Guardianship:

- Guardianship of the Person
- Guardianship of the Estate
- Guardianship of the Person & Estate
 - Temporary Guardianship
 - Co-Guardianship
 - Successor Guardianship
 - Limited Guardianship
- Family Guardian/Private Professional Guardian

Determination of a Need for Guardianship

- **Proposed Ward's Diagnosis (physical/mental)**
 - (Dementia, TBI, mental health, intellectual disabilities)
- **Cognitive Deficits**
 - Orientation
 - Short-term/long-term memory/immediate recall
 - Executive function (breaking down complex tasks)
 - Ability to communicate

Determination of a Need for Guardianship

- **Ability to Make Responsible Decisions**
 - Prepare MPOA/DPOA/Advanced Directive
 - Make complex business/managerial decisions, manage income, pay bills
 - Drive, vote, marry
 - Determine own residence
 - Administer medications
 - Consent to medical treatment
 - Attend to basic and instrumental ADLs

Determination of a Need for Guardianship

- **Developmental Disability**
 - Level of intellectual functioning: mild, moderate, severe, profound
- **Evaluation of Capacity**
 - Partial/Total

Steps to Initiating Guardianship

- You will need to hire an Attorney, certified to practice guardianship law (a list of qualified attorneys will be provided to you).
- Your Attorney will request information regarding the alleged incapacitated person's personal, medical and financial status.
- You will be asked to provide the Attorney with a Certificate of Medical Examination (the form will be provided to you).
- Once the Application is filed, the Court will appoint an Attorney ad Litem to represent the alleged incapacitated person.
- During the process, you will need to register the guardianship and take a Texas Guardianship Training course on-line at <https://www.txcourts.gov/jbcc/register-a-guardianship/>
- A Court Investigator will contact you for an interview and assessment, after which he/she will submit a Guardianship Report with recommendations.
- Your Attorney will then schedule a hearing.



For more information:

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Probate Court No. 2
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4th Floor, Room 422
El Paso, Texas 79901
915-546-8183 (Office)
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Thank You!

Questions & Answers

