

Understanding Guardianships and Guardianship Alternatives

A Presentation by

Texas RioGrande Legal Aid, Inc.

In conjunction with The Arc of San Antonio

Overview of Presentation

- Guardianship Alternatives and Guardianships
- What they are
- When they can be used
- Process
- This presentation provides legal information only.
- For legal advice about your specific situation, you will need to consult an attorney.

Parents are the natural guardians of their children's persons before they turn 18.



What happens at 18?



- ◉ The right to vote
- ◉ The right to marry
- ◉ The right to contract
- ◉ The right to consent to medical treatment
- ◉ The right to make educational decisions

BUT....

What if the adult (child) still needs help taking care of himself because of a mental or physical condition?

What if the adult (child) is unable to exercise these rights due to a disability?

ALTERNATIVES TO GUARDIANSHIP

Legal and non-legal options to help a person with a disability that impairs the person's ability to **meet their essential needs**

The **law** requires that alternatives to guardianship be considered **before** seeking guardianship.

Key questions when analyzing alternatives

- How is the person incapacitated?
- Are there ways those needs can be met?

What are some examples of alternatives to guardianship?

Supports
and Services

Person-
Centered
Planning

Supported
Decision
Making

Surrogate
Decision
Making

Powers of
Attorney



SUPPORTS AND SERVICES

Supports and Services can be Informal



Supports and Services can be Formal

Medicaid
Waiver
Programs

Provider
Services

Day Programs

Transportation
Aids

Assisted
Technology

Person-Centered Planning

Things you probably already do to
accommodate a person with disabilities



Family Plan for
Just in Case

Service
Coordinator/Case
Manager

Getting to know
law
enforcement/area
businesses

Lists of
medications that
work and do not
work

Individualized
Education Plan

Supported Decision Making

Process by which individuals with disabilities received support from a trusted person

3 things a supporter can do in a supported decision making agreement



Access Information

Help the person understand the options

Communicate information

Identity of person with disability and supporter

Appointment of Supporter:

I (Name of Adult with Disability), _____
am entering into this agreement voluntarily.

I choose (Name of Supporter) _____
to be my Supporter.

Supporter's Address: _____

Phone Number: _____

E-mail Address _____

Examples of decisions

My Supporter may help me with life decisions about:

- Yes ___ No___ obtaining food, clothing and a place to live
- Yes ___ No___ my physical health
- Yes ___ No___ my mental health
- Yes ___ No___ managing my money or property
- Yes ___ No___ getting an education or other training
- Yes ___ No___ choosing and maintaining my services and supports
- Yes ___ No___ finding a job
- Yes ___ No___ Other: _____

What the SDMA authorizes

My Supporter does not make decisions for me.

To help me make decisions, my Supporter may:

- 1. Help me get the information I need to make medical, psychological, financial, or educational decisions;
- 2. Help me understand my choices so I can make the best decision for me; or
- 3. Help me communicate my decision to the right people

Signatures

The agreement is signed by the person with the disability and the supporter.

The agreement must be witnessed by two witnesses

OR

Signed before a notary.

The agreement is valid until it expires or until it is revoked.

Surrogate Decision Making

Areas in which the law allows a person to make decisions for another without being “appointed”

Surrogate Decision Making for Medical Decisions

- Consent to Medical Treatment Act – applies to individuals who are patients of
 - ▣ Hospitals
 - ▣ Nursing Homes
 - ▣ HCS Agencies
- Emergency Consent to Medical Treatment – applies when there is no time to obtain consent for life-sustaining treatment
- Surrogate Decision Makers in ICF Homes

Surrogate Decision Making for Finances



- Representative Payee program for Social Security
- Trustees set up for a life insurance policy, a special needs trust, qualified income trust, management trust

Powers of Attorney

Medical Power of Attorney

Durable Power of Attorney

Authorized Representative

Medical Power of Attorney



Chooses a person to make health care decisions if the person who signs it becomes medically incapacitated

“Asleep” until the person is determined to lack capacity.

Durable Power of Attorney

- Can be effective now or upon incapacity
- Can designate to handle any type of decision except medical decisions

Examples: education, financial, insurance, benefits

Authorized Representative

- Power of Attorney for HHSC
- SNAP
- Medicaid

How to choose guardianship alternatives?



- Think about the areas where the person with a disability needs help.
- Will one or more of these options allow the person to meet their needs?



Finances

- Rep payee
- Joint bank account
- Trust
- SDMA
- Power of attorney

Medical

- SDMA
- Consent to Medical Treatment Act
- Emergency Consent
- HIPAA Release

Insurance

- Authorized representative
- Power of attorney
- SDMA

Guardianships

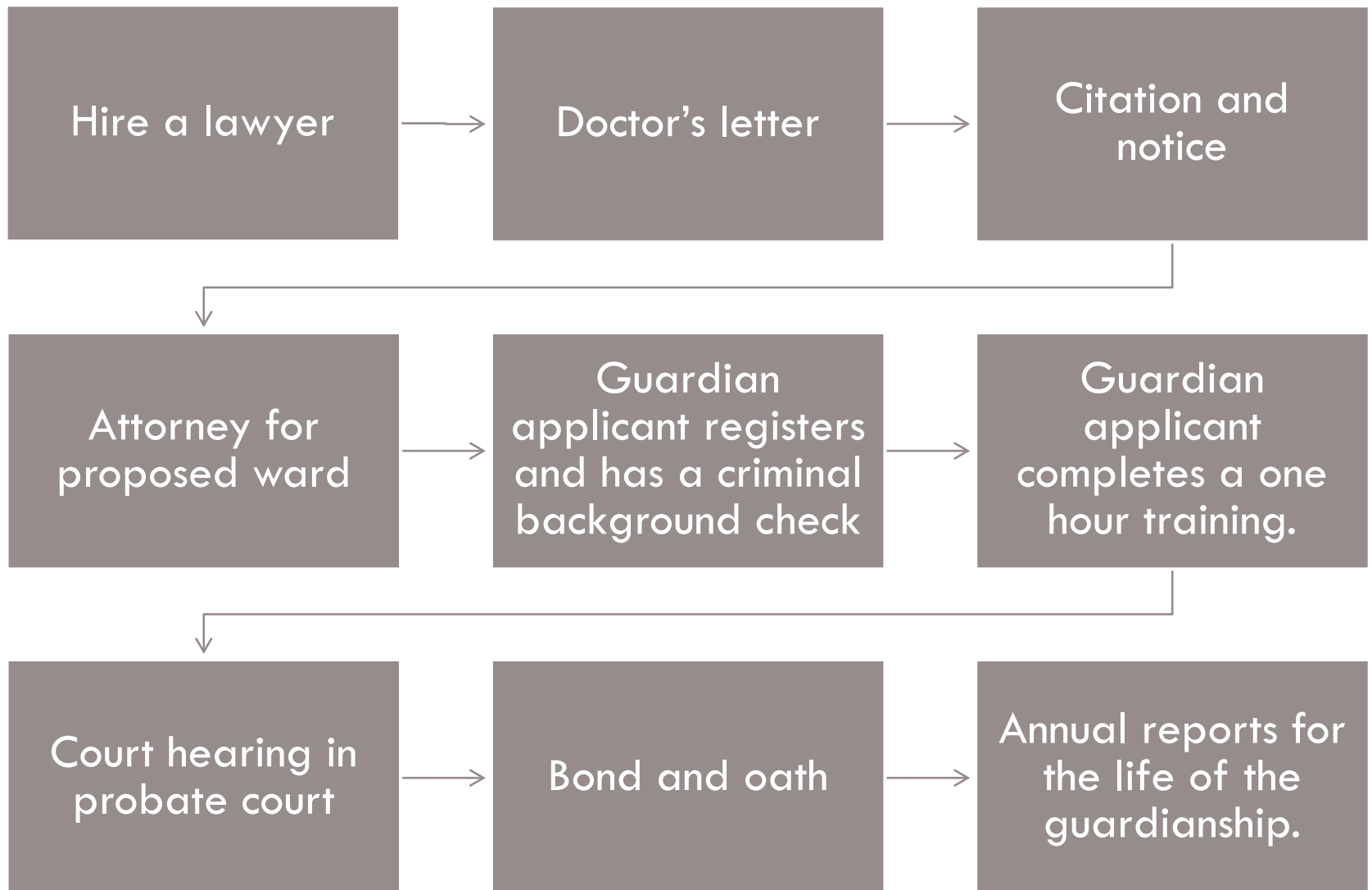
Court created relationship in which a person's rights are terminated or restricted and they are subject to a court's jurisdiction.

The guardian makes decisions but is accountable and under the **supervision** of the **court**.

2 things to know about guardianships

- Guardianships are **only** an option if alternatives will not work.
- Guardianship are **always** an option if alternatives do not work – now or in the future

The guardianship process



Why not guardianship “just in case”?



A guardianship is a semi-permanent decision. It is hard to un-do.

The law says you must prove that guardianship alternatives will not work.

A note about timing

- It is not “too early” or “too late” to start thinking about guardianships and alternatives
- Neither guardianship alternatives nor guardianships can take effect before the age of 18
- A guardianship cannot be filed before 17 years and 6 months
- Some alternative (Medicaid waiver programs) have wait lists

A note about costs

- Guardianship alternatives are less expensive because most do not require an attorney.

- Guardianships cost money
 - Filing fees
 - Cost of attorney to represent the applicant
 - Cost of attorney to represent the proposed ward
 - Bond premium
 - Annual reports

Referrals

- San Antonio Bar Association Lawyer Referral Service
- (210) 227-1853
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- Catholic Charities (sliding scale)
- 210-293-1009 – guardianship alternatives and guardianships
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- Texas RioGrande Legal Aid, Inc.
- 888-988-9996 – guardianship alternatives and guardianship advice and referrals
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- Disability Rights Texas – guardianship alternatives only
- 800-252-9108

Free resources



www.texaslawhelp.org

<https://www.thearcoftexas.org/alternatives-to-guardianship/>

<https://www.disabilityrightstx.org/en/category/sdm/>

<http://www.supporteddecisionmaking.org/>

<https://hhs.texas.gov/laws-regulations/forms/advance-directives>

<https://hhs.texas.gov/services/aging/long-term-care/aging-disability-resource-center/find-adrc>

Summary

- For adults with disabilities and cognitive impairments, there are legal and non-legal ways to meet their needs
- The only person who can decide a guardianship is necessary is a judge
- Guardianship is always an option if it's necessary. The law requires alternatives to be considered first.