



Guardianship and Alternatives to Guardianships Overview

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Supported Decision Making

- "Supported decision-making" means a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions, including decisions related to where the adult wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with, and where the adult wants to work, without impeding the self-determination of the adult.
- "Supported decision-making agreement" is an agreement between an adult with a disability and a supporter entered into under this chapter.
- "Supporter" means an adult who has entered into a supported decision-making agreement with an adult with a disability.

Estates Code §1357.002 (3)-(5)



Supported Decision Making cont..

Sec. 1357.055. of the Estates Code-AUTHORIZING AND WITNESSING OF SUPPORTED DECISION-MAKING AGREEMENT. (a) A supported decision-making agreement must be signed voluntarily, without coercion or undue influence, by the adult with a disability and the supporter in the presence of two or more subscribing witnesses or a notary public.
(b) If signed before two witnesses, the attesting witnesses must be at least 14 years of age.

Sec. 1357.102. REPORTING OF SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION. If a person who receives a copy of a supported decision-making agreement or is aware of the existence of a supported decision-making agreement has cause to believe that the adult with a disability is being abused, neglected, or exploited by the supporter, the person shall report the alleged abuse, neglect, or exploitation to the Department of Family and Protective Services in accordance with Section [48.051](#), Human Resources Code.

Powers of Attorneys



* **What is a General Durable Power of Attorney?**

- * a document used to appoint a trusted person as your agent for specific financial and property transactions that you choose, such as power to buy or sell real property and to manage your financial accounts. This gives your agent legal authority to act in your place if you have limited mobility or become incapacitated and cannot do those things yourself. This document cannot take the place of a Last Will and Testament as it is not effective after your passing.

* **Powers granted to the Agent**

- * (A) Real property transactions; (B) Tangible personal property transactions;(C) Stock and bond transactions;(D) Commodity and option transactions; (E) Banking and other financial institution transactions; (F) Business operating transactions; (G) Insurance and annuity transactions; (H) Estate, trust, and other beneficiary transactions; (I) Claims and litigation; (J) Personal and family maintenance; (K) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service; (L) Retirement plan transactions; (M) Tax matters;

* **Restrictions**

* **Revocation**

Powers of Attorneys

* What is a Medical Power of Attorney?

- * It is a document, signed by a competent adult, i.e., “principal,” designating a person who the principal trusts to make health care decisions on the principal’s behalf should the principal be unable to make such decisions. The individual chosen to act on the principal’s behalf is referred to as an “agent.”

* Powers granted to the Agent

- * Under a medical power of attorney, an agent is given wide latitude when consenting to treatment on the principal’s behalf. However, an agent cannot consent to: §166.152(f) • Commitment to a mental institution, • Convulsive treatment, • Psychosurgery, • Abortion, and • Neglect of comfort care. And in the medical power of attorney document itself, the principal may limit the agent’s decision making authority

* Restrictions

* Revocation

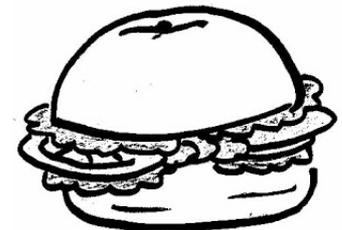
- * A medical power of attorney may be revoked by notifying either the agent or the principal’s physician or provider orally or in writing, of the principal’s intent to revoke. This revocation will occur regardless of the principal’s capacity to make health care decisions. Further, if the principal executes a later medical power of attorney, then all prior ones are revoked. If the principal designates his/her spouse to be the agent, then a later divorce revokes the medical power of attorney. §166.155

Guardianships

The Texas Estates code in section [1002.017\(2\)\(A-C\)](#) defines an incapacitated adult as a person who because of a ***physical or mental condition***, is ***substantially*** unable to provide:

- Food
- Clothing
- Shelter
- Care for their own physical health
- Manage their own financial affairs

For him/herself.



Types of Guardianships and Venue

Section [1101.001 \(3\)](#) states that there are two types of guardianships

1. Guardianship of the Person
2. Guardianship of the Estate

Venue

Under section [1023.001\(a\)](#) Individuals can apply to be guardians in the county:

1. where the potential ward resides
2. where the potential ward is located when the application is filed
3. where the principal estate of the potential ward is located

Selection of a Guardian

The court will appoint a guardian after considering the circumstances and the incapacitated person's best interests as provided by [Section 1104.101](#).

- * [Sec. 1104.102](#). APPOINTMENT PREFERENCES are given to eligible (1) spouses (2) nearest of kin (3) the court shall appoint the eligible person who is best qualified to serve as guardian if neither of the two listed before are qualified or refuse to serve.

Joint Appointment

Under Section 1104.001 (b) a court will allow for **the joint appointment** of an incapacitated person if they are:

- (1) Husband and wife
- (2) Joint managing conservators
- (3) Co-guardians
- (4) Parents of an incapacitated adult as long as the incapacitated person has not been:

-the subject of a suit affecting the parent child relationship; or

-has been the subject of a suit affecting the parent-child relationship but both of the person's parents who were named as joint managing conservators in the suit are no longer serving in that capacity.

Eligibility of a Guardian

A person may not be appointed as a guardian:

- * If under Section 1104.351 the person is a minor, another incapacitated person, or incapable of properly managing and controlling the ward.
- * If they have been found by the court to be unsuitable. Section 1104.352
- * If under Section 1104.353(b) they have been classified as having engaged in notoriously bad conduct like: a sexual offense, aggravated assault, injury to a child, abandoning or endangering a child, terroristic threat or continuous violence against the incapacitated person or their family.
- * If there is a conflict of interest as described in Section 1104.354.
- * If they have been disqualified in a declaration under Section 1104.202(b).
- * If as described by Section 1104.356 they lack required certification.
- * If they are non-residents and have not named an agent with the court to accept service of process in their guardianship proceeding as outlined in Section 1104.357.
- * If they are applying to be a guardian of an incapacitated person whom they have been found to have committed family violence against. Section 1104.358.

Guardian of The Person

The rights and duties of the guardian of the person under section 1151.051 (c)(1)-(6)(A)(B) include:

- The right to have physical possession of the ward and the duty to establish the ward's legal domicile.
- Ensuring that the ward is cared for, supervised and protected.
- Providing clothing, food, medical care, and shelter for the ward.
- The power to sign documents so that the ward can be employed
- The power to consent to medical, psychiatric and surgical treatment except for the psychiatric commitment of the ward which requires court approval.



Guardian of the Estate

- * Section [1151.101 \(b\)](#) states that an individual who has been named guardian of the estate is responsible for managing the estate of the ward and collecting all funds and property due to the estate.



Temporary Guardianship

- * Under section [1251.001\(a\)](#) the court can choose to appoint a temporary guardian if there is probable cause to believe that the person requires immediate appointment of a guardian like emergency medical procedures, and cases involving time sensitive issues.



Appointment of the Guardian

Section [1104.103 \(a\)](#) states that an adult with capacity may by written declaration designate a person to serve as a guardian in the event that the declarant becomes incapacitated.

- Under section [1104.203 \(a-b\)](#) the declaration must be signed by the declarant and either written in the declarant's handwriting or attested to by two witnesses in the presence of the declarant.
- The declaration can also be proved by attaching a self-proving affidavit under section [1104.155 \(a\)](#) which serves as proof that the declarant was competent when the declaration was executed.

Service and Notice Requirements

Section [1101.103\(7\)\(c\)](#) states that once the petition has been notarized and filed the potential ward will be served.

-This is required by the court to ensure that a potential ward that does have capacity is given the opportunity to object to the process that is being initiated.

Notice will also be given to the relatives of the potential ward notifying them of the application for guardianship as prescribed under section [1051.103\(a\)\(1\)-\(4\)](#) & [1051.104\(a\)\(1\)-\(9\)](#).

Understanding the Process

- * The court will appoint an Attorney Ad Litem. The Attorney Ad Litem will represent the proposed ward's interests. The Attorney Ad Litem will meet with the potential ward and report back to the court with their determination as to whether a guardianship is necessary. [1054.001](#)
- * The proposed guardian must register and complete training with the Judicial Branch Certification Commission (JBCC). This certificate must be filed with the court before the hearing. Additionally, the JBCC will also conduct a background check that they will submit to the court. [§155.102 & 155.151 of the Government Code](#)

Investigation

Additionally, on the filing of an application for guardianship under section [1054.151](#), a court investigator will conduct an independent investigation. The investigator will give their own recommendation taking into consideration the Medical Examination Report filled out by the potential ward's physician. The court investigator shall investigate the circumstances alleged in the application to determine whether a less restrictive alternative to guardianship is appropriate.

Understanding the Process

A hearing is then set in which the Attorney Ad Litem will present their findings, the potential guardian will be questioned and the judge will make their final determination on the petition as outlined in section [1054.004](#).

Bond

- * After the court has found that a guardianship is necessary, the guardian ***is required*** by the court to take out a surety bond to ensure that ward is protected against mismanagement, waste, and fraud by the guardian. For a guardian of the person, if the bond is set at \$11,000.00 the guardian has the option to pay a one time fee of \$375 or an annual bond of \$100. ([1105.101](#) and [1105.102 \(b-c\)](#))
- * For a guardianship of the Estate a one time fee is not permissible and the bond is set according to the assets of the proposed ward section as explained in section [1105.154](#).

Understanding the Process

- * Once the Judge has signed the bond for Guardianship.
 - The Judge and Applicant sign the bond from the bond company
 - Letters of Guardianship are then issued.
- Every year after the Guardian is required to:
 - * Submit an annual report of well being of Ward explained in section [1163.001\(1-7\)](#)
 - * Possibly pay bond
 - * Have a visit from a court monitor

Legislative Updates

* Compensation of Guardians of Medicaid Recipients

1155.202

- * SB 1784 **increases** the compensation that may be paid to a guardian appointed to receive Medicaid **from \$175/month to \$250/month** (effective immediately)



APS Reporting Requirement

Texas Human Resources Code Sec. 48.051.

REPORT. (a) Except as prescribed by Subsection (b), **a person having cause to believe** that an elderly person, a person with a disability, or an individual receiving services from a provider as described by Subchapter F is in the state of abuse, neglect, or exploitation **shall report** the information required by Subsection (d) immediately to the department.

(b) If a person has cause to believe that an elderly person or a person with a disability, other than an individual receiving services from a provider as described by Subchapter F, has been abused, neglected, or exploited in a facility operated, licensed, certified, or registered by a state agency, the **person shall report the information** to the state agency that operates, licenses, certifies, or registers the facility for investigation by that agency.

(c) The duty imposed by Subsections (a) and (b) **applies without exception to a person whose knowledge concerning possible abuse, neglect, or exploitation is obtained during the scope of the person's employment or whose professional communications are generally confidential, including an attorney**, clergy member, medical practitioner, social worker, employee or member of a board that licenses or certifies a professional, and mental health professional.

(d) The report may be made orally or in writing. It shall include:

- (1) the name, age, and address of the elderly person or person with a disability;
- (2) the name and address of any person responsible for the care of the elderly person or person with a disability;
- (3) the nature and extent of the condition of the elderly person or person with a disability;
- (4) the basis of the reporter's knowledge; and
- (5) any other relevant information.

(e) If a person who makes a report under this section chooses to give self-identifying information, the caseworker who investigates the report shall contact the person if necessary to obtain any additional information required to assist the person who is the subject of the report.

Failure to Report

Texas Human Resources Code Sec. 48.052.

FAILURE TO REPORT; PENALTY.

(a) **A person commits an offense if the person has cause to believe that an elderly person or person with a disability has been abused, neglected, or exploited or is in the state of abuse, neglect, or exploitation and knowingly fails to report in accordance with this chapter. An offense under this subsection is a Class A misdemeanor, except that the offense is a **state jail felony** if it is shown on the trial of the offense that the abused, neglected, or exploited person is a person with an intellectual disability who resided in a state supported living center, the ICF-IID component of the Rio Grande State Center, or a facility licensed under Chapter [252](#), Health and Safety Code, and the actor knew that the person had suffered serious bodily injury as a result of the abuse, neglect, or exploitation.**

(b) This section does not apply if the alleged abuse, neglect, or exploitation occurred in a facility licensed under Chapter [242](#), Health and Safety Code. Failure to report abuse, neglect, or exploitation that occurs in a facility licensed under that chapter is governed by that chapter.

It's everyone's business to stop elder abuse.

**Be a champion for older Texans
and those with disabilities.**

*Know the signs of adult abuse, neglect, and
financial exploitation and report it to
Adult Protective Services.*



**Call 800-252-5400 or report online at
TxAbuseHotline.org**



**Learn More at
EveryonesBusiness.org**

You can report alleged
abuse , neglect, and
exploitation by contacting
the APS hotline:
1-800-252-5400

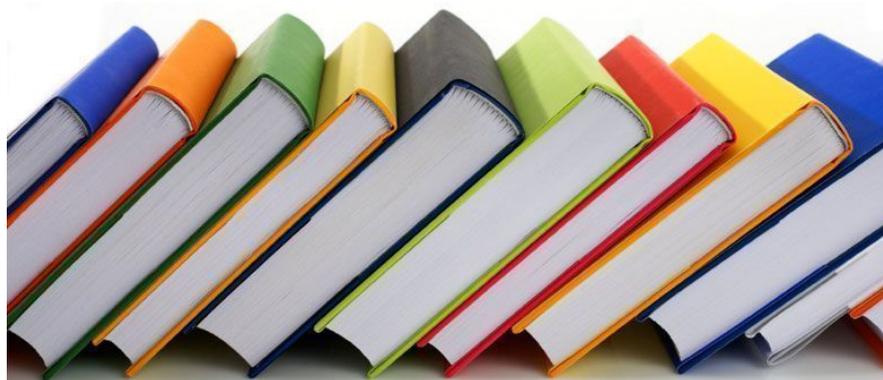
Resources

Guardianship Checklist

Guardianship Application Checklist

Uncontested Guardianship Docket Procedures

Attorney Ad Litem Manuel



All listed recourses can be found on the Probate Court 2 website

Thank you for your time

Judge Veronica Vasquez

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