



Guardianship and the Alternatives



What is Guardianship

- Enables Guardian to make decisions (financial, medical, living, etc.) on behalf of the Ward, similar to a parent/child relationship
- Removes the ability of the Ward to make those decisions for themselves
- Puts ultimate responsibility for the care of the Ward on the Court



Key Differences

Guardianship

- Ward no longer has the right to make decisions for themselves
- Guardian is able to make decisions for Ward
- Ward is protected from being taken advantage of and from making poor decisions
- Guardian reports activities to the Court
- Statewide database with emergency contacts

Power of Attorney

- Ward is able to make decisions for themselves
- Guardian is able to make decisions for Ward
- Ward is responsible for everything they sign, even if they do not understand it
- Legal responsibility to act in Ward's best interest



Types of Guardianships

- Of the Person-care and control of the person other than in-patient psychiatric commitment
- Of the Estate-manage property, debts, assets, income, and lawsuits
- Full Guardianship-Guardian has control over all aspects of Ward's life
- Limited Guardianship-Ward retains the right to make certain decisions on their own



Guardianship Procedure

- Consider less restrictive alternatives
 - Supported Decision Making Agreement
 - Financial Power of Attorney
 - Medical Power of Attorney
 - Representative Payee for Social Security
 - Special Needs Trusts
 - ABLE Account



Guardianship Procedure (cont'd)

- Physician's Certificate of Medical Examination
- Application
- Service of Citation/Notice
- Registration of Guardian
- JBCC Online Training
- Bill of Rights for Proposed Wards
- Attorney Ad Litem
 - Represents the Proposed Ward's wishes
- Guardian Ad Litem
 - Represents what is in the Proposed Ward's best interests



Guardianship Procedure (cont'd)

- Meet with Court Investigator
- Hearing
- Oath of Guardian
- Bond
- Court Visitor
- Modification



Guardian's Duties-General

- Meet with Attorney Ad Litem
- Meet with Guardian Ad Litem
- Meet with Court Investigator
- Attend Hearing
- Oath
- Bond



Guardian's Duties-of the Estate

- Notice to Creditors
- Inventory
- Take possession of assets
- Request allowance for Ward
- Request permission from the Court before major purchases
- File Annual Accounting



Guardian's Duties-of the Person

- Ensure Ward is well cared for
 - Annual physical exams
 - Routine dental checkups
- Update the Court as to any major changes in Ward's life
 - Change of address
 - Out of the state for long periods of time



Alternatives to Guardianship: Supported Decision Making Agreement

- ▶ Person with disability names supporter to assist in making decisions
 - ▶ Obtaining food, clothing, and shelter
 - ▶ Taking care of physical health
 - ▶ Managing financial affairs
- ▶ Supporter **CANNOT** make decisions for the person with disabilities
- ▶ Can be revoked at any time



Alternatives to Guardianship: Financial Power of Attorney

- Technically a Statutory Durable Power of Attorney
- Person appoints another person(s) to manage financial affairs
- Can be effective immediately or upon disability/incapacity
- Can be broad or restrictive
- Can be revoked at any time



Alternatives to Guardianship: Medical Power of Attorney

- Person appoints another person to make health care decisions in the event that they are unable to make them for themselves
- Physician will decide when it is needed
- Decisions may range from hospital admission to end of life care
- Helpful to have a Directive to Physician (living will)
- Can be revoked at any time



Alternatives to Guardianship: Special Needs Trust

- ▶ Unlimited amount of assets
- ▶ Not considered countable assets for purposes of qualification for certain governmental benefits
- ▶ Cannot be used for housing or food
- ▶ Monies placed in the Trust are not subject to a judgment

Alternatives to Guardianship: ABLE Account

- Achieving a Better Life Experience
- Generally will not affect eligibility for SSI, Medicaid, or other public benefits
- Individuals with significant disabilities; the onset of disability must have begun prior to age 26*
- Total annual contributions by all participating individuals is \$17,000; up to \$100,000 before loss of SSI; lifetime maximum of \$550,000
- Can be used for education, housing, transportation, employment training and support, assistive technology, personal support services, health care expenses, financial management, and administrative services
- More choice and control for beneficiary and family
- Cost of establishing is minimal (\$50), [TexasABLE.org](https://www.texasable.org)

*Starting in 2026, the eligibility age will increase to 46



Any questions?

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