

## Guardianship

Texas RioGrande Legal Aid - Austin Office (<https://texaslawhelp.org/directory/legal-resource/texas-riogrande-legal-aid-austin-office>) [1]

This article tells you about guardianship—what it is, and the various rights and responsibilities related to it. This article was written by Texas RioGrande Legal Aid. (<http://www.trla.org>) [2]



### **What is a guardianship?**

A guardianship is a relationship created and monitored by a court that takes away legal rights from a person (called the ward) and gives those rights to another person (the guardian). In Texas, a guardianship is almost always sought for incapacitated adults. Legal incapacity means that a person who, because of a physical or mental condition, is substantially unable:

- to provide for his or her own food, clothing, or shelter, or
- to care for his or her own physical health or to manage personal financial affairs.

### **There are two kinds of guardianship: guardian of the person and guardian of the estate.**

A guardian of the person has control over the ward's personal matters, such as housing, medical, and educational decisions.

A guardian of the estate has control over the ward's property and finances.

One person can serve as both a guardian of the person and of the estate.

### **Disability or incapacity?**

Disability is not the same as incapacity. A person can have a disability without being incapacitated.

Incapacity can be partial or total. If partial, the guardian's rights over the ward may be limited.

If the proposed ward is minor, a parent can give a power of attorney for nonparent caregiver to act on behalf of the child. If the child has lived with the caregiver full time for more than six months, the caregiver may be able to file for legal custody of the child.



### **I was told I have to get a guardianship. Is there another way?**

Guardianship is a last resort.

If you were told by a person or a government entity to get a guardianship, ask why it is needed. If you know the purpose, there may be another way you can legally act behalf of another person:

- **Power of Attorney:** a power of attorney gives one person the legal right to act on behalf of another. A person who is mentally incapacitated cannot create a power of attorney because a power of attorney can only be created by a person who knows and understands what they are signing.
- **Social Security:** The Social Security Administration, or SSA, allows a person's benefits to be sent to that person's representative payee regardless of incapacity. A guardianship is unnecessary.
- **Public Benefits:** A family member can act as the authorized representative of an incapacitated person in order to receive food stamps, TANF, and Medicaid for that person.
- **Emergencies:** A family member can make decisions for the person who is the hospital or a facility if that person is unable to communicate.

### **There is no suitable alternative to guardianship. How do I become a guardian?**

You must hire an attorney. You have a right to represent yourself in court, but you do not have the right to represent another person. Only a licensed attorney may represent the interests of the proposed ward.

**The Process:** Your attorney will file an application for guardianship with the county court. A doctor must evaluate the proposed ward and certify that he or she is incapacitated. The proposed ward must be personally served with application. Other 'interested persons,' such as relatives, must also be served or notified. An attorney ad litem will be appointed to represent the interests of

proposed ward. You, the proposed ward (unless medically frail or otherwise unable to attend) and your attorneys will appear in court for a hearing. At the hearing, you will testify as to why a guardianship is necessary.

**If Appointed Guardian:** Within 20 days of appointment, you must sign under oath that you will perform the duties of a legal guardian and post a bond with the court. After you post the bond, the clerk will issue “Letters of Guardianship” to prove that you are the guardian. The letters expire after 16 months. To get new letters, you must file an annual report and post a new bond. The court can remove you as guardian if you violate the oath, for example, using the ward’s funds for your personal benefit.



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