



L O N E S T A R
L E G A L A I D

Guardianship 101

What is a Guardianship?

A guardianship is a legal relationship where an individual (the “guardian”) is appointed by a court to make decisions and manage the personal and financial affairs of an incapacitated person (the “ward”). Through guardianship, a court takes away legal rights from the ward and gives those rights to the guardian. As a guardian, you have a fiduciary duty to act on behalf of and in the best interests of the ward in all decisions relating to the ward.

In Texas, a guardianship is almost always sought for incapacitated adults (rather than children). 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.

General Powers and Duties of a Guardian

While anyone can apply to be appointed a guardian, priority is typically given to family members of the ward or to the preferences of the ward, and factors, such as having certain criminal convictions, may disqualify someone from being appointed as guardian. Whoever is appointed as the guardian will generally have the following powers and duties:

- the right to have physical possession of the ward and to establish the ward's legal domicile;
- the duty to provide care, supervision, and protection for the ward;
- the duty to provide the ward with clothing, food, medical care, and shelter;
- the power to consent to medical, psychiatric, and surgical treatment other than the inpatient psychiatric commitment of the ward; and
- the power to sign documents necessary or appropriate to facilitate employment of the ward.

Types of Guardianships

There are two types of guardianships:

of the Person	of the Estate
has control over the ward's personal matters, such as housing, medical, and educational decisions.	has control over the ward's property and finances.

One person can serve as both a guardian of the person and of the estate. A guardianship of the estate is not necessary if there are little to no assets or income to manage. For example, if the ward only receives Social Security income and lives with family, a guardianship of the estate is probably unnecessary. If only a guardianship of the person is in place, a guardian can still manage certain finances for the ward and be the ward's representative payee for things like Social Security income.

Less Restrictive Alternatives to Guardianship

Guardianship should be a last resort as it strips the ward of legal rights, limiting their independence and self-determination. Adult guardianships revoke the ward's fundamental rights like voting, marrying, making medical decisions, managing assets, and signing legal documents. Consequently, Texas law requires courts to consider less restrictive alternatives before appointing a guardian. ***Guardianship should only be used when no suitable less restrictive alternatives are available.*** Alternatives to guardianship include:

- appointing an agent under a medical power of attorney;
- advanced directives;
- assigning an attorney or agent under a durable power of attorney;
- appointing a representative payee;
- establishing joint bank accounts;
- supported decision-making agreements;
- creating a management trust; and
- limited guardianships.

More information regarding alternatives to guardianship can be found [***here***](#).

Guardianship Process—What to Expect

1. Determining that Guardianship is Necessary

The first step in the guardianship process is to confirm that it is ***the only and best option*** for the proposed ward. Since guardianship is highly restrictive, several people, including attorneys, the proposed ward's doctor, and sometimes court staff, must evaluate if less restrictive alternatives can be used to avoid guardianship.

Attorneys and doctors determine this by interviewing the proposed ward to assess their capacity - if they understand and can make decisions for themselves. Attorneys conduct informal interviews, while doctors complete a Health Care Provider's Certificate of Medical Examination ("PCME") form during the interview. The PCME, which is completed by a physician, psychologist, or advanced practice registered nurse, helps the court decide if the proposed ward is legally incapacitated and needs a guardian. The PCME must be filed with the guardianship application. The PCME must be completed at an appointment that is within 120 days before the date the application is filed with the court. ***Because the PCME cannot be used after 120 days from the date of the appointment, it is extremely important that you are available to communicate with your attorney and answer their calls, emails, and contact attempts.***

2. Filing a Guardianship Application with the Court

The next step is for your attorney to prepare the guardianship application to be filed with the Court in the county you reside.

To draft the application, your attorney will need specific information from you and will strive to make this process easy and efficient. In addition to reviewing notes from previous calls with Lone Star Legal Aid staff, your attorney will provide a questionnaire to gather necessary details.

Along with general information about you and the person you are seeking the guardianship of, such as addresses, driver's license numbers, and marital statuses, the attorney will also need the following details:

- Have you ever been convicted of a crime? If so, what crime? When?
- Do you owe any money to the proposed ward?
- Does the proposed ward owe any money to you?
- Is the proposed ward's other parent alive (assuming you are a parent of the proposed ward)? What is the other parent's address?
- Does the proposed ward have any siblings (including half-siblings)? What are their ages and addresses?

The questions above are not exhaustive but are necessary to confirm your eligibility as a guardian and to ensure all required information is included in the application.

After you complete the questionnaire, the attorney will use this information, along with the PCME and previous notes, to draft the guardianship application. The attorney will then provide you with the draft for review to make sure the information is correct, which may involve a few calls and emails. After, a Lone Star Legal Aid staff member will meet with you to notarize any required documents before filing them with the Court.

3. Service & Notice

Texas requires any guardianship application filed to be served on the following people:

- (1) a proposed ward;
- (2) the proposed ward's parents;
- (3) any court-appointed conservator or person having control of the care and welfare of the proposed ward; and
- (4) the proposed ward's spouse.

Seeing officers from the Sheriff's or Constable's Department at your door can be intimidating, but there's no need to worry. This is a routine part of the guardianship process. The officers are there to serve the proposed ward with the guardianship application and complete a "Return of Citation," noting the date and time the application was delivered.

In most cases, a parent is applying to become the guardian for their child, so the only other person that needs to be served is the proposed ward's other parent. Additionally, Texas requires notifying any adult siblings of the proposed ward about the guardianship application.

Your attorney can send each adult sibling a "Waiver and Acknowledgment" form to sign and notarize, indicating their support for the guardianship and allowing the Court to proceed without their objection. This usually helps speed up the process. If an adult sibling is not willing or able to sign a waiver and acknowledgment, notice of the guardianship and a copy of the application will have to be delivered to them by mail.

If there are safety concerns about someone knowing about the guardianship or having your address (listed in the application), inform your attorney as soon as possible. If there is a protective order against or protecting anyone who must be served or notified, the attorney can request the Court to redact certain personal information in the documents. While this is not guaranteed, courts can grant the request.

Once all returns of citation and waivers are received, the attorney will file them with the Court.

4. Attorney Ad Litem and Court Investigator

Because guardianships are restrictive and intended to be a last resort, courts appoint an **attorney ad litem (AAL)** to represent the proposed ward's legal interests. The AAL will:

- Interview the proposed ward
- Review the application, medical certificates, and other relevant information
- Discuss the case, legal options, and grounds for guardianship with the proposed ward
- File a contest to the guardianship if appropriate
- Ensure the proposed ward has been properly served
- Interview the proposed ward's family and potentially other witnesses

Your attorney will provide the AAL with your contact information to facilitate communication and coordination. The AAL represents the proposed ward until the guardianship is granted, denied, or the AAL is relieved of their duties by the Court.

The Court may also appoint a **court investigator** who performs similar functions as the AAL. The investigator will interview you and the proposed ward, review relevant documents, and determine if guardianship is necessary. The investigator will then submit a report with their findings to the Court.

While these steps may seem invasive, they are routine and necessary to make sure the guardianship is in the proposed ward's best interest. It is not intended to be scary, and your attorney can help ease any anxiety or discomfort these processes may cause.

5. Registering the Guardianship and Required Training

The Judicial Branch Certification Commission (JBCC) oversees the certification, registration, and licensing of various legal professionals and the registration of guardianships in Texas.

To register the guardianship with the Texas JBCC, you need to create an account and complete an online registration form. Your attorney may create the account using your email and start the registration for you, as they will have most of the required information. They will then provide you with the login credentials so you can review and correct any information before submitting the form. After submission, you will receive a registration receipt, which you should forward to your attorney. The JBCC will automatically conduct a criminal background search, which is required by law.

Next, you must complete a mandatory guardianship training course, which takes about one hour. The course is completed online and can be stopped and started at your convenience.

Similar to the JBCC registration, your attorney can create an account for you using the same credentials. After completing the training, you will receive a certificate of completion. Download or print this certificate in PDF format and email it to your attorney, as it must be filed with the Court.

6. Final Hearing

Once all required tasks are completed and all persons served or notified of the guardianship application have had time to object, the matter can be set for a final hearing. Guardianship cases have no waiting period, so how long the process will take varies based on how quickly the steps are completed.

When ready, your attorney will contact the Court for available hearing dates and coordinate with you and the AAL to agree on a date and time. The final hearing is usually brief, typically lasting no more than an hour.

Before the hearing, your attorney will schedule a call to prepare you, describing the hearing process and providing a “script” of questions and answers. The hearing procedure varies, but generally, your attorney will ask you questions about the need for guardianship, the proposed ward’s protection needs, and your qualifications to be a guardian. Other witnesses may be called, and the AAL will have the opportunity to ask you questions. If possible, the proposed ward may also be asked questions. Once the hearing ends, if the guardianship will be granted, the judge should sign the order appointing you as guardian, outlining your duties, and imposing the appropriate bond. The “bond” will usually be a small amount of money (\$25-\$50) that you will have to pay to the court to hold in trust until you complete or resign your duties as guardian.

Within 20 days of your appointment, you must sign an Oath of Guardian and pay the bond to the Court, with your attorney’s assistance. The Court can then issue "Letters of Guardianship," proving your legal guardianship of the ward.

7. Responsibilities After Being Appointed as Guardian

After signing and filing the Oath of Guardian and posting the bond with the Court, you can request Letters of Guardianship from the Court, which confirm your legal status as the ward’s guardian. Your ongoing responsibilities include caring for the ward, filing an annual report with the Court, accommodating an annual check-in visit from the court investigator, and updating your contact information with the Court if it changes.

Your attorney will explain when and how you need to file your annual report and update your contact information. Your reporting period starts on the date the Court approves your bond, with the next report due one year and 60 days after this date, and annually on the same date thereafter. Your attorney will likely recommend completing your annual report on the anniversary that the judge signed the order granting the guardianship to avoid forgetting the date and missing the deadline.

Set a recurring annual reminder in your phone or planner to ensure you file your annual report on time.

Once the Court approves your annual report, order new Letters of Guardianship. These are valid for 1 year and four months from the date the clerk issues them, providing extra time for your annual report to be approved and for you to get the new letters. Order letters by calling the clerk's office or sending in a paper form to the clerk.

Frequently Asked Questions

1. Can more than one person be the guardian of the person?

Technically, yes. Two people can be guardians of the person, but under specific circumstances, such as husband and wife, joint managing conservators (under a court order/divorce decree), or both parents of the adult ward if the proposed ward 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 and the parents were appointed joint managing conservators but are no longer serving as joint managing conservators. Generally, only one guardian of the person is appointed for the ward.

2. Can I pick who will be the guardian after me (in case I cannot be the guardian anymore or pass away)?

No. Only the Court can appoint a guardian. You may be able to file a suggestion or request for a specific person to take over in the event you become incapacitated or pass away, with the Court, but the Court does not have to honor this, and the person will still have to be appointed guardian by the Court (and register, complete the guardianship training course, and qualify as a guardian just like you did). The good news is, once the guardianship is in place, appointing a successor guardian when you resign or become incapacitated or deceased, is a much simpler and shorter process than the initial guardianship process.

3. If I only have a guardianship of the person, can I still be the ward's representative payee?

Yes. You do not need a guardianship of the estate to be the ward's representative payee for benefits like Social Security.

4. Can the guardianship end?

Yes. If the ward's condition significantly improves and the guardianship becomes unnecessary, the guardianship can end, and the ward's rights will be restored. This requires a court order. You should contact an attorney if you think the ward no longer needs a guardianship.

5. Why are there so many steps and hurdles to getting a guardianship?

A ward in a guardianship has certain fundamental, treasured American rights taken from them, such as the right to vote, operate a motor vehicle, marry, and more. The state of Texas, and many other states, view guardianship as a very restrictive remedy that should only be used if absolutely necessary to protect the ward. The steps and hurdles to get a guardianship are required by the laws of the state of Texas to prevent guardianships from being put in place when they are not absolutely needed and prevent people who should not be guardians from being guardians.

6. If I have a criminal history, can I still be a guardian?

Maybe. A person may not be appointed guardian if the person's conduct is "notoriously bad." What "notoriously bad" means is obviously different from judge to judge. There are certain criminal convictions that make it presumed that your conduct is notoriously bad, such as certain types of assault or family violence. The JBCC will run a background check on you and provide it to the Court to consider. It is very important that you are honest with your attorney and tell them any criminal history you may have so that they can tell you how likely it is that you can be appointed guardian and prepare to make arguments of why you should be appointed guardian despite any criminal history to the judge.