Families in Texas need to understand when guardianship may be necessary, what it involves, and when alternatives may provide a better solution. Guardianship is a legal arrangement established for someone who is unable to manage their own financial or personal care matters due to age or other impairments.

Before the court will authorize guardianship, the judge must be satisfied that there is no other way to protect the person involved. That is because guardianship removes or limits an individual's personal rights. It is considered a drastic measure or a last resort. So, it is critical to be aware of alternatives to guardianship and wise to plan in advance to avoid guardianship if possible.

When Do Families Need to Consider Guardianship?

Families may need to establish guardianship of an adult with impaired mental capacity or a minor who needs someone other than a parent to exercise authority on their behalf. Guardianship does not become necessary just because an adult has a physical or mental disability, although these circumstances often provide grounds to undertake preparatory legal measures to avoid the need for guardianship later.

An adult must be legally incapacitated before a guardianship can be appointed to manage their affairs. In general terms, this means they are unable to make appropriate decisions about their care, and there are no less restrictive alternatives available to protect their interests.

Minors always need a guardian because of their age, but parents usually serve in that role as the "natural guardians" of their children. In some cases, however, parents are

unable to fulfill their responsibilities, and another person needs to be authorized to fill the role.

What Are the Different Types of Guardianship in Texas?

Guardianship as a concept is fairly simple, but the details can be complex because there are four types of guardianship arrangements. They all involve one person exercising authority on behalf of someone who is not legally capable of managing their own affairs for one reason or another and is often referred to as the ward.

Who Manages the Financial Affairs of an Incapacitated Adult?

Guardianship of the estate is the formal term for a situation in which a guardian is appointed to handle the financial affairs of an adult who cannot manage their own money. The guardian is usually put in charge of:

Income
Assets
Real estate and personal property
Paying bills
Managing investments

What is Guardianship of the Person?

When an adult is unable to properly care for personal needs, such as healthcare and appropriate living arrangements, a guardian can be appointed to make decisions

regarding residency, medical care, and personal matters. The court does not always give the guardian full authority to handle all matters. They can tailor the authority to the ward's limitations.

What Happens When an Adult Needs Someone to Manage Everything?

The third type of guardianship recognized in Texas is guardianship of both the person and the estate. This role can be filled by one person or split among two people.

Who Makes Decisions for Minors?

When parents of a minor are deceased, or they lose their parental rights, the court appoints a guardian of the estate and a guardian of the person for the minor. By contrast, if parents are separated or divorced, the court may authorize one or both parents to make decisions for the minor through a conservatorship. This can be confusing because in other states, the role of conservator is the same as guardian of the estate.

What Alternatives to Guardianship Should Families Consider in Texas?

Because guardianship is a measure of last resort in most cases, families need to consider whether it is possible to use alternatives such as:

Durable financial power of attorney
Medical power of attorney
Supported decisionmaking

Trusts
Representative payee programs
Joint bank accounts
Management of community property

Some of these options need to be set up before guardianship becomes necessary. A person who is incapacitated does not have the legal capacity to grant a power of attorney, and powers of attorney are among the most effective tools for avoiding guardianship.

Any competent adult can have an estate planning attorney prepare a springing power of attorney that only takes effect in the event of incapacity. Then, if illness, injury, or the aging process prevents them from managing their own affairs, the person they name as agent can take over. But if the need never arises, then everything remains in the control of the person who created the power of attorney.

Options such as designating a representative payee or having a spouse manage community property can be undertaken after a vulnerable individual has become incapacitated, but these measures address only limited aspects of the financial picture. Similarly, supported decision-making and community services can help with personal care issues, but critical needs may not be addressed through these piecemeal measures.

How Do You Obtain Guardianship in Texas?

The Texas Department of Health and Human Services says the first step in obtaining guardianship is to hire an attorney. That is because while any adult can represent their own interests in court without a lawyer if they choose, only a licensed attorney can

represent someone else's legal interests in court. If you are trying to obtain guardianship of a loved one, the legal proceeding focuses on them rather than you, so an attorney must be hired to represent them.

After that:

The attorney files an application for guardianship with the court.
A qualified doctor evaluates the person for whom guardianship is proposed. The doctor must certify that the person is incapacitated for the proceeding to go forward.
Official notification of the proceedings must be provided to the person proposed for guardianship (the proposed ward) and other interested family members.
The person who wants to be appointed as the guardian must file an affidavit with specific information about parties who may be interested in the proceedings.
A special representative, known as a guardian ad litem, may be appointed to protect the proposed ward.
A hearing is held where the proposed guardian explains why guardianship is necessary. The court may hear from witnesses, including other family members and the proposed ward.
The judge determines whether guardianship is appropriate and whether the proposed guardian is qualified to serve in the role.

If a guardian is appointed, the guardian must sign an oath pledging to perform the duties. In addition, the guardian must post a bond. Then the court will issue a guardianship authorization lasting 16 months. At the end of that period, if guardianship is still necessary, a new authorization can be obtained by the guardian by posting a new bond and filing an annual report.

What are the Duties of a Guardian in Texas?

Guardians have a number of legal responsibilities under Texas law, including the duties listed in Section 1151 of the Texas Estates Code as well as specific duties that may be included in the order establishing guardianship. Overall, guardians are obligated to act in the best interests of the ward and manage the ward's estate with the same care they would apply to their own property.

What Are Some of the Specific Rights and Duties of a Guardian of the Person?

The right to establish the ward's legal residency
The duty to provide care, supervision, and protection
The duty to provide food, clothes, shelter, and medical care
The power to consent to medical treatment

There are also numerous other duties, including an obligation to keep the court updated about a change of address and to notify the court when the ward passes away.

What Are Some of the Specific Rights and Duties of a Guardian of the Estate?

The guardian of the estate has the power to:

Possess and manage the ward's property
Access the ward's digital assets
File lawsuits on behalf of the ward
Collect debts owed to the ward

Purchase or exchange property for the ward

In exercising powers, the guardian has an obligation to exercise ordinary diligence and manage the estate as a prudent person would.

FAQs About Guardianship in Texas

Why is it so hard to get guardianship approved in Texas?

Because guardianship limits or removes the legal rights of the ward and carries the potential for abuse, courts require strict medical evidence of incapacity and mandatory legal representation to protect the rights of the proposed ward.

What is the legal definition of incapacity?

Section 1002.017 of the Texas Estates Code defines an incapacitated person as someone who is either a minor or an adult who is unable to either:

Provide food, clothing, or shelter for their own needs
Care for their own physical health, or
Manage their own financial affairs

While incapacity is caused by a mental or physical condition, someone does not become incapacitated just because they suffer from a disability.

Can a family member be named guardian of an

incapacitated adult in Texas?

Yes, but the court must first determine that guardianship is necessary and then find that the family member proposed as guardian is appropriate for the role.

What is the difference between guardian of the person and guardian of the estate?

The guardian of the person handles personal care and living arrangements, while the guardian of the estate manages financial matters.

The Nordhaus Firm Can Help with Guardianship and Alternative Measures to Avoid Guardianship

At the Nordhaus Firm, we understand the process is not easy. But it is important to protect loved ones and to have difficult conversations if you start to notice that their memory is failing or that they are struggling to provide for their own needs. If you work with us to create powers of attorney or other measures while older adults still retain legal capacity, you can prevent the need for difficult guardianship proceedings later.

But if guardianship has become necessary, we are ready to make the process as straightforward as possible. To learn more about the options in your situation and how we can assist, schedule a free consultation with April Nordhaus by calling 214-726-1450 or contacting us online now.