

What's the Difference Between Conservatorship and Guardianship in Texas?

Texas has some unique laws when it comes to guardianship and conservatorship, and for that reason, people often use the wrong terminology or get confused about the needs of a family situation. At The Nordhaus Firm, we are dedicated to helping families find the most efficient solutions to address concerns, and sometimes that requires conservatorship, guardianship, both—or neither one.

While we are always happy to meet with you individually to discuss how these roles might work in your situation, we thought it would be helpful to provide some basic background information on conservatorship and guardianship and the differences between them.

Conservatorship Involves Minors

In many states, conservators handle financial matters, while guardians handle personal care matters for individuals of all ages. That is not the case in Texas. In our state, conservatorship refers only to custody issues involving children under the age of 18.

Establishing conservatorship is an issue that arises in divorce cases, but it is important in estate planning for parents of minor children. It is important to have a will nominating conservators to care for the children in case something should happen to the parents. Many times, we refer to this as nominating a guardian for the children, but technically, it would be a conservator handling the child's care and a guardian of the estate to manage the child's financial affairs.

Understanding Guardianship

In general terms, a guardian manages the affairs of someone who has been legally determined to be unable to manage their own affairs, which is known as being incapacitated. The person in need of guardianship is known as a ward. Courts often appoint guardians for individuals who suffer from mental or physical disabilities that interfere with their ability to provide for their own needs or make safe decisions. These disabilities may develop as part of the aging process or could be longstanding conditions. Often, parents of children with certain disabilities will seek guardianship when their child turns 18. In other common scenarios, individuals seek guardianship for a parent who is suffering from dementia or another condition that prevents them from safely managing their own affairs.

Guardianship in Texas can be ordered on a limited or partial basis so that the ward retains certain rights. If the ward is not capable of maintaining any responsibilities, the court will order full guardianship, known as plenary guardianship.

Guardian of the Estate

In Texas, courts can appoint two types of guardians: a guardian of the estate and a guardian of the person. A guardian of the estate administers money and property belonging to the ward.

When someone accepts the role of a guardian of the estate, they agree to become a fiduciary. This imposes a legal obligation to act for the benefit of the ward rather than their own personal benefit. Because of the legal duties associated with guardianship of the estate, as well as the limitations imposed by the law and applicable court order, it

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is a good idea for the guardian to work closely with their attorney to be certain they understand everything before taking any actions on behalf of the ward.

Guardian of the Person

Guardianship of the person involves assuming responsibility to ensure that the ward's physical needs are met. The guardian can exercise control over where the ward lives, the medical care they receive, and the activities they participate in.

The person who serves as guardian of the person may also serve as guardian of the estate, or these roles can be held by two different people.

Alternatives to Guardianship

Guardianship takes away one individual's rights and legally assigns them to another person. For this reason, it is considered a measure of last resort. The court will want to investigate to ensure that there are no other ways to protect the proposed ward before agreeing to appoint a guardian.

In many cases, other legal or practical options can be used to avoid the need for guardianship. This is particularly true for families who plan in advance. For instance, an adult with difficulty with memory but who has not reached the stage of legal incapacity can execute a power of attorney authorizing a loved one to handle matters when necessary so there would be no need for guardianship. This is a much easier and less expensive process than obtaining guardianship. An estate planning attorney can tell you more about this and other options that can be used in place of guardianship in many situations.

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For Help with Guardianship Issues, You Can Rely on The Nordhaus Firm

At The Nordhaus Firm, we help families with guardianship and alternative measures on a regular basis. If you have questions or want to learn more, we invite you to schedule a free consultation at your convenience. Just call 214-726-1450 or contact us online today to schedule your complimentary consultation.