

## **Guardianship: What is it and When Does it Matter?**

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Professionals who serve people experiencing domestic violence have raised a number of questions about serving people with disabilities who may have a guardian. Some of those questions include: What is guardianship? Can a person with a guardian make any of their own decisions? Are there liability concerns connected with serving people with disabilities? What agencies provide support or investigative services to a person who may be experiencing abuse, neglect, or exploitation? The information provided here is not intended as legal advice, and if an agency or organization has specific concerns, please consult legal counsel.

The vast majority of people with disabilities, including cognitive disabilities, do not need guardians. An individual may require assistance from others or accommodations based on their disability but still be able to make informed decisions based on their own preferences. Most importantly, the presence of a physical or mental disability or the age of an individual does not indicate the need for guardianship. Everyone deserves to exercise control over their own life to the extent possible.

### **Guardianship Defined**

Guardianship is a legal designation that places the rights, safety, well-being, and legal choices of a person into the hands of another for the purpose of protection from abuse, neglect, or exploitation. Guardianship is conferred on a relative, friend, guardianship program, or private professional guardian by a judge's decision that a person is deemed incapacitated.

The Texas Probate Code defines an "incapacitated person" as: (A) a minor; (B) an adult who, because of a physical or mental condition, is substantially unable to provide for their own food, clothing or shelter; to care for their own physical health; or to manage their financial affairs; or (C) a person who must have a guardian appointed to receive funds due the person from any government resource.

Guardianship comes in different forms, including full or limited guardianship of the person, guardianship of the estate, and temporary guardianship. This article addresses guardianship of the person.

#### *Limited Guardianship*

Texas looks at guardianship through the lens of the least restrictive alternative and is one of about 13 states that offer limited guardianship. The Texas Probate Code requires limited guardianship to "encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person."

#### *Full Guardianship*

In guardianship of the person with full authority, nearly all of an individual's rights are removed and entrusted to someone else. A full guardian has the authority to make decisions concerning nearly all aspects of a person's life, including where an individual

lives, whether or which educational or recreational activities a person can access, what support services are appropriate, the ability to consent to medical services, and other related decisions. An agreement giving consent for medical services, including a rape exam, or a liability waiver signed by a person who has a guardian with full authority is most likely voidable. A guardian cannot require in-patient psychiatric treatment but does have the authority to transport the individual for an evaluation. It is important to note that guardianship of the estate would be required to address management of a person's financial assets.

### **Serving Survivors of Domestic Violence Who Have Disabilities**

A domestic violence shelter or agency should not be deterred from working with an individual based on the possibility that the person has a guardian. If you have questions about a specific case or situation, please consult with an attorney or local court personnel, depending upon the need or question.

Guardianship professionals and attorneys agree that there is not a duty for agency staff to investigate whether or not a person has a guardian. However, any agreement signed by an individual with a guardian may be voidable. The same may be true for an individual under limited guardianship, depending upon how that guardianship is structured.

Practically speaking, the only person who would have standing to sue over a confidentiality agreement or liability waiver would be the guardian, and a guardian is not likely to sue a domestic violence agency for protecting the health and safety of an individual. In such a case, a guardian's and an agency's missions coincide.

Grounds for immediate removal of a guardian include neglect, cruelty, or misappropriation of property that has been entrusted to the care of the guardian. If the guardian is the alleged abuser, the individual or a domestic violence agency or shelter, as an interested party, would have standing to petition the court for immediate removal. A general counsel or court personnel can help guide you through initiating the removal process.

### **Researching Guardianship Status**

If you have concerns or questions about whether someone accessing services may have a guardian, the first place to go for information is that person. During the intakes process for receiving services from a domestic violence agency or shelter, staff should respectfully ask the individual if he/she has a guardian and how to contact the guardian if he/she does.

If you are unable to determine guardianship status by talking with the individual, talk to the court with jurisdiction over guardianship cases in your area. Guardianship proceedings are public record; develop a relationship with the appropriate court and court staff in your district. If a question does come up, a court clerk will be able to help you determine whether a person has a guardian, how to notify a guardian if necessary, and answer procedural questions about guardianship cases.

One of three courts may have jurisdiction over guardianship cases in your district: a statutory probate court, a county court at law, or a constitutional county court. Where

there is a probate court, it will have original jurisdiction in a guardianship case. There are 18 statutory probate courts in 10 of the 15 largest metropolitan areas in Texas.

If you deal with courts frequently, one tool you may already have is the judicial database through the Office of Court Administration. This database allows you to search for different court types in your area, or for all courts of a particular type. (See <http://dm.courts.state.tx.us/OCA/DirectorySearch.aspx>.)

## Resources

The following resources may be helpful if you are interested in researching whether a person has a guardian or concerned that a guardian is the alleged abuser:

- **Adult Protective Services**  
(800) 252-5400  
<http://www.txabusehotline.org>  
APS Resource/External Relations Specialist – regional  
[http://www.dfps.state.tx.us/everyonesbusiness/Contact\\_Us.asp](http://www.dfps.state.tx.us/everyonesbusiness/Contact_Us.asp)
- **Advocacy, Inc.** – Texas’ protection and advocacy organization for people with disabilities. AI takes abuse, neglect, and exploitation cases. Contact your regional office to become familiar with the intake process and what you can expect if you refer a client to AI.  
(800) 252-9108  
<http://www.advocacyinc.org/contact.cfm>
- **Guardian Certification Board** – Every public and private professional guardian is required to be certified by the state. If you have a question or concerns about a public or private professional guardian, contact the GCB.  
<http://www.courts.state.tx.us/gcb/gcbhome.asp>  
Certified and Provisionally Certified Guardians  
<http://www.courts.state.tx.us/gcb/gcblist.asp>.
- **Department of Aging and Disability Services** – In the case of a public guardian.  
<http://www.dads.state.tx.us/services/guardianship/index.html>
- **Office of Court Administration** – Database of Courts by Type and Location  
<http://dm.courts.state.tx.us/OCA/DirectorySearch.aspx>