

Alternatives to Guardianship

Guardianship is a legal process to determine if a person is “incapacitated.” The court decides if, due to a physical or mental condition, the individual is substantially unable to manage their financial affairs or personal affairs (to provide food, clothing, or shelter for themselves, and to care for their physical health). Under a guardianship, someone is appointed to make decisions on behalf of the incapacitated person, referred to as the “ward.” There are two main types of guardianships:

1. **Guardian of the Person:** Responsible for the physical well-being of the ward, including making medical decisions and choosing residence
2. **Guardian of the Estate:** Responsible for the ward’s assets

Under a full guardianship of the person, an individual **loses many rights**, including the right to drive, choose where to live and work, vote, get married, consent to medical treatment, and more. **All people need and use support to make important life decisions.**

Even if a person with a disability needs extra help to make significant life decisions, their right to make their own choices should not automatically be taken away.

The Arc of the United States and The Arc of Texas believe that **the majority of people with intellectual and developmental disabilities** can manage their own affairs with informal assistance and guidance and **do not need a guardian**. The Arc of Texas continually works with a variety of stakeholders and legislators to pass legislation that protects people under guardianships and ensures that guardianship is only used after other less-restrictive alternatives have been considered. There are many such alternatives to guardianship (see sidebar) that give people with disabilities support to make decisions without taking away their rights. For example, an individual with a disability may be able to receive services through a Medicaid community-based waiver or through Community First Choice that support her/him and make guardianship unnecessary. **All available formal and informal supports and services should be considered before deciding to pursue a guardianship.**

What Are Alternatives to Guardianship?

This is a list of just SOME of the many ways to support people with disabilities to make decisions without taking away their rights through a guardianship. Please contact our offices at 1-800-252-9729 for more information about how to make these options work for your family.

1. Supported decision-making
2. Medical power of attorney
3. Durable power of attorney
4. Use of a representative payee
5. Establishing a joint bank account
6. Management trust
7. Special needs trust
8. Advanced medical directives
9. Medicaid services such as CFC, HCS, CLASS, etc.
10. Money management programs

In 2015, Texas became the first state to legally recognize supported decision-making agreements as an informal alternative to guardianship. Using a supported decision-making agreement, a person with a disability chooses someone they trust to serve as their supporter. This person can help the individual with a disability understand the options, responsibilities, and consequences of their decisions; obtain and understand information relevant to their decisions; and communicate their decisions to the appropriate people. **The supporter cannot, however, make a decision FOR the person with a disability.** Supported decision-making agreements are filled out by the individual and their supporter and specify the ways in which the supporter can help the individual make decisions. These agreements can then be provided to people like doctors and service providers.

Supported decision-making agreements and other alternatives to guardianship empower people with disabilities to use available support to make their own choices so they can live more independent and self-directed lives. **Remember that no agency or school district can require your family to seek a guardianship.** You can continue to be involved in your loved one's life even without a guardianship.

Bill of Rights for Persons Under Guardianship

In 2015, the Texas legislature passed a bill of rights for persons under guardianship. Under Estates Code Section 1151.351, people under guardianship have the rights below, unless they are specifically removed by a judge.

- Live, work, and play in the most integrated setting.
- Visit with people of their choice.
- Appear before the court to express their preferences and concerns.
- Have access to a monthly personal allowance.
- Receive timely and appropriate medical care.
- Visits from the guardian at least once every three months.
- And more!

See the law for the full list of rights.

Protections for People under Guardianship

In some situations, a family may decide that pursuing a guardianship is the best option for them. In Texas, obtaining a guardianship requires hiring an attorney and going to court to determine the capacity of the person in question. Additionally, you will need your child's physician to complete a certificate of medical examination (CME). For the CME, the physician answers specific questions about the person's mental and physical capabilities and gives their professional opinion about whether the person has capacity to make her or his own decisions.

Families who choose to pursue guardianship can still take many important steps to protect the rights of their loved ones. **You can obtain a limited, or partial, guardianship, in which all rights are preserved except for those specifically taken away by the court.** For example, under 2015 law, it is assumed that a person under guardianship can choose their own residence, unless a preponderance of evidence shows that the person lacks the capacity to make this choice. You can also protect many other important rights for your loved one, such as the right to marry, drive, vote, consent to medical care, and more.



*For people with intellectual
and developmental disabilities*

For more information on alternatives to guardianship,
please contact our offices at **1-800-252-9729** or visit the websites below.

The Arc of Texas: Guardianship

<http://www.thearcoftexas.org/guardianship>

The Arc of Texas: Educational Decision Making When Your Child Turns 18

<http://bit.ly/1XcfBM6>

The Arc of Texas Master Pooled Trust

<http://www.thearcoftexas.org/trust/index.php>

The Arc US

<http://bit.ly/1TTeK20>

National Resource Center for Supported Decision-Making

<http://supporteddecisionmaking.org>

Texas Guardianship Association

<http://bit.ly/1HVOGHh>

Texas Guardianship Reform and Supported Decision Making

www.grsdm.org

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