



“I THINK MY LOVED ONE / FRIEND / NEIGHBOR NEEDS A GUARDIAN.”

Guardianship is the legal process of removing someone’s rights and giving them to someone else to protect. Removing someone’s rights is a very big deal. The courts are mandated to institute a process of checks and balances to ensure Guardianship is absolutely necessary. The Texas Estates Code tells us someone who may qualify for Guardianship is “substantially unable to provide food, clothing, or shelter” for oneself due to cognitive or physical impairment. Also, the court considers whether any kind of “supports or services” are in place or could be arranged to provide the needed support to retain someone’s rights and avoid Guardianship.

Can this individual manage their finances? Are they able to make their own medical decisions? Notice these questions do not ask how well someone is able to do these things. We all have the right to make good and bad choices.

The question becomes does someone have a cognitive or physical impairment that limits their ability to provide for or make safe decisions for themselves. That is not something you, as a friend or loved one, must answer. The court requires a physician to provide medical evidence to support (or not support) someone’s ability to make safe decisions for themselves. Probate courts appoint a Court Investigator to assess the need for Guardianship and give input into who might be the best person to serve as Guardian. The courts also appoint an “Attorney ad Litem” to represent the wishes of the individual in which Guardianship is being considered – even if their wish is to not have a Guardian. It is important their rights and wishes are given a voice in this process, too.

After all assessments are complete, the attorneys present the evidence and call witnesses during the Guardianship hearing. The Judge makes the final decision whether or not a Guardianship is granted, and if so, who the Guardian will be.

“Who will be the Guardian?”

The courts prefers family serve a Guardian. The Texas Estates Code defines who can and cannot be the Guardian. It is likely there is more than one person who could qualify to be the Guardian. However, it is the Judge’s decision to decide who will serve as Guardian.



Sometimes a person does not have family or friends willing or able to serve as Guardian. The court will investigate who alternatively can serve. The court can appoint an “independent third party” to serve as Guardian. This might be a Private Professional Guardian, an attorney, or a Guardianship Program.

“How do I help my loved one get a Guardian?”

An attorney certified in Probate is required to seek Guardianship. An Elder Law Attorney, also known as a Probate Attorney or Estate Planning Attorney, files a document with the court called an Application. The court also requires a physician complete the “Certificate of Medical Examination” form which the attorney also files with the court. Filing these two documents will open an investigation into the need for Guardianship.

Expect it will take anywhere from 6 weeks to 6 months or more to complete the Guardianship process. As mentioned, it is a big deal to remove someone’s rights. It is critical that all alternatives and options are considered, and it takes time to complete this investigation.

A retainer fee of \$2,000-\$5,000+ is likely, however most attorneys will initially consult for free prior to formal representation. When the Guardianship is “contested” – meaning either the individual or someone else with an attorney disagrees with the need for Guardianship or they disagree with who should be the Guardian – the cost will increase significantly.

- The Texas Bar Association website has a search engine where you can “find an attorney” in your area. www.TexasBar.org
- The North Texas Legal Aide hotline may also be a resource for finding an attorney on a sliding scale fee. www.NorthTexasLegalAide.com (214) 748-1234
- Or a simple Google search for your County and Probate Attorney should provide a list of options. i.e. “Dallas County Probate Attorney”



“How do I help my patient / resident / client get a Guardian?”

Share the information above with the individual’s family about hiring an attorney.

If Adult Protective Services is involved, inform the APS case worker and inquire about making a referral for guardianship through HHSC Guardianship Program.

If the individual does not have family, the Texas Estates Code does allow for a referral to be made directly to the court.

Your referral depends on what county the individual resides (or where they own property).

You must submit a referral form AND the Certificate of Medical Examination (CME) to the court to open an investigation for Guardianship.

Collin County Probate Court - 972-548-6463

Dallas County Probate Courts – 214-663-6446

Hunt County Court at Law - (903) 408-4200

Kaufman County Court at Law - (972) 932-0212

Rockwall County Court at Law - (972) 204-6410

Tarrant County Probate Courts – 817-884-3251