

# Guardianship Frequently Asked Questions

## **Do I need an attorney to file for guardianship?**

- Yes. The State of Texas requires anyone acting on the behalf of a third person to be represented by an attorney.

## **Do I have to be certified to be a guardian?**

- No. Only a professional guardian must obtain certification.

## **Who is likely to be appointed guardian?**

- The court is obligated to appoint guardians according to the statutorily mandated hierarchy located in Texas Estates Code 1104.051-1104.054, 1104.101-1104.103, and 1202.002

## **What are the types of guardianship?**

- A guardian of the person makes decisions regarding the life and person of the ward. A guardian of the estate makes decisions regarding the financial affairs of the ward.

## **Can the same person be the guardian of the person and the estate?**

- Yes, upon qualification. If there is a guardian of the estate a bond for the estate is required. If someone is only appointed guardian of the person a bond is still required.

## **Are there alternatives to guardianship?**

- Yes! There are many alternatives to guardianship. Some, but not all, including Durable Power of Attorney, Medical Power of Attorney, Power of Attorney, Protective Orders and Trusts.

## **How long does a guardianship last?**

- Permanent guardianship lasts so long as incapacity of the ward continues. Temporary guardianship has a term of not more than 60 days or if it is a contested temporary guardianship until the contest has been resolved.

## **Do we have to go back to court to change guardians?**

- Yes. Unless otherwise specified by a Court Order, the guardian of the person remains in office until the ward dies or regains capacity or until the guardian is discharged by the Court.

## **Can a guardian quit?**

- Yes. If the guardian wishes to resign, the guardian must file an application to resign; however, before the guardian is relieved of his or her duty the Court must determine whether or not to accept the resignation. Often, the Court will appoint a successor before accepting the resignation and discharging the previous guardian of the person. This procedure gives the Court an opportunity to appoint a successor guardian of the person before discharging the current one, so the ward always has someone to protect his or her interests. PLEASE NOTE, however, that your duty and liability are not discharged until the Court approves your application to resign and discharges you.

**What happens to the ward if the guardian of the person dies first?**

- If the guardian of the person dies the Court should be notified immediately as the Court is obligated to appoint a successor guardian. Any interested person may contact the Court with that information and file pleadings communicating the death of the guardian of the person, or apply, with the assistance of an attorney, to be appointed as successor guardian of the person.

**Can a guardian appoint a successor?**

- No. Only the Court can appoint a qualified successor guardian. However, a guardian can suggest or designate a successor guardian.

**Do the guardian and the ward have to live in the same home?**

- No.

**I lost my guardianship letters. How can I get new ones?**

- Letters of guardianship may be obtained from the County Clerk. Each copy will cost \$2.00.

**Who or what is a Guardian Ad Litem (GAL)?**

- A GAL is an attorney appointed to represent the best interests of the proposed ward.

**Who or what is an Attorney Ad Litem (AAL)?**

- An AAL is an attorney for the proposed ward. An AAL's duties are the same as if the attorney had been retained by the proposed ward for representation in the case.

**Please note the County Judge and court staff cannot give legal advice or answer legal questions. If you need someone to research the law and give you legal advice, you should consult an attorney.**

**Where can I review a file or recently filed documents?**

- Documents may be reviewed at the Lubbock County Clerk's office at 904 Broadway, on the second floor.

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