

Guardianship in Texas

Individuals with disabilities, parents, advocates, others and the Texas legislature have realized the need for other options to “full guardianship”. This term means that a person has **all** of their rights given to another person. In the Spring of 2015 the 85th Texas legislature passed three bills on this topic that were signed into law.

- **SB 1881** – Authorizing supported decision-making agreements for certain adults with disabilities.
- **SB 1882** (Zaffirini) – Bill of rights for people under guardianship
- **CSHB 39** (Smithee/Zaffirini) – Guardianship Reform

The law now lists specific individual rights. When addressing guardianship for an individual, the court must consider if some of the rights can remain with the individual. Courts must also consider informal/formal supports and services for the individual and their ability to choose their residence. More info is required from doctors. The attorney for the individual must have training in alternatives to "full" guardianship, and supported decision-making agreements. Requires the court, Before appointing a guardian the court must make certain findings, including finding by clear and convincing evidence that alternatives to guardianship that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible, and supports and services available to the proposed ward that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible.

“Unless limited by a court or otherwise restricted by law, a person is authorized to the following:”

- (1) to have a copy of the guardianship order and letters of guardianship and contact information for the probate court that issued the order and letters;
- (2) to have a guardianship that encourages the development or maintenance of maximum self-reliance and independence in the ward with the eventual goal, if possible, of self-sufficiency;
- (3) to be treated with respect, consideration, and recognition of the person's dignity and individuality;
- (4) to reside and receive support services in the most integrated setting, including home-based or other community-based settings, as required by Title II of the Americans with Disabilities Act;
- (5) to consideration of their current and previously stated personal preferences, desires, medical and psychiatric treatment preferences, religious beliefs, living arrangements, and other preferences and opinions;
- (6) to financial self-determination for all public benefits after essential living expenses and health needs are met and to have access to a monthly personal allowance;
- (7) to receive timely and appropriate health care and medical treatment that does not violate their rights granted by the state and U.S. constitution and laws;
- (8) to exercise full control of all aspects of life not specifically granted by the court to the guardian;
- (9) to control their personal environment based on their preferences;
- (10) to complain or raise concerns regarding the guardian or guardianship to the court, including living arrangements, retaliation by the guardian, conflicts of interest between the guardian and service providers, or a violation of any rights under this section;
- (11) to receive notice in their native language, or preferred mode of communication, and in a manner accessible to them, of a court proceeding to continue, modify, or terminate the guardianship and the opportunity to appear before the court to express their preferences and concerns regarding whether the guardianship should be continued, modified, or terminated;
- (12) to have a court investigator, guardian ad litem, or attorney ad litem appointed by the court to investigate a complaint received by the court from them or any person about the guardianship;

(13) to participate in social, religious, and recreational activities, training, employment, education, habilitation, and rehabilitation of their choice in the most integrated setting;

(14) to self-determination in the substantial maintenance, disposition, and management of real and personal property after essential living expenses and health needs are met, including the right to receive notice and object about the substantial maintenance, disposition, or management of clothing, furniture, vehicles, and other personal effects;

(15) to personal privacy and confidentiality in personal matters, subject to state and federal law;

(16) to unimpeded, private, and uncensored communication and visitation with persons of their choice, except that if the guardian determines that certain communication or visitation causes substantial harm to the ward:

(A) the guardian may limit, supervise, or restrict communication or visitation, but only to the extent necessary to protect the person from substantial harm; and

(B) the person may request a hearing to remove any restrictions on communication or visitation imposed by the guardian under Paragraph (A);

(17) to petition the court and retain counsel of their choice who holds a certificate required, to represent their interest for capacity restoration, modification of the guardianship, the appointment of a different guardian, or for other appropriate relief, including a transition to a supported decision-making agreement;

(18) to vote in a public election, marry, and retain a license to operate a motor vehicle, unless restricted by the court;

(19) to personal visits from the guardian or the guardian's designee at least once every three months, but more often, if necessary, unless the court orders otherwise;

(20) to be informed of the name, address, phone number, and purpose of Disability Rights Texas, an organization whose mission is to protect the rights of, and advocate for, persons with disabilities, and to communicate and meet with representatives of that organization;

(21) to be informed of the name, address, phone number, and purpose of an independent living center, an area agency on aging, an aging and disability resource center, and the local mental health and intellectual and developmental disability center, and to communicate and meet with representatives from these agencies and organizations;

(22) to be informed of the name, address, phone number, and purpose of the Judicial Branch Certification Commission and the procedure for filing a complaint against a certified guardian;

(23) to contact the Department of Family and Protective Services to report abuse, neglect, exploitation, or violation of personal rights without fear of punishment, interference, coercion, or retaliation; and

(24) to have the guardian, on appointment and on annual renewal of the guardianship, explain the rights delineated in this subsection in their native language, or preferred mode of communication, and in a manner accessible to them.

It will take judges, attorneys, individuals with disabilities, guardians, and parents some time to become knowledgeable, and comfortable with implementing the new law. However, it appears clear that the intent is to provide alternatives to full guardianship, and that the court consider whether the person can maintain some of the rights listed. State organizations and agencies that support individuals with disabilities and their families will be adding additional resources regarding guardianship. These should include ARC-Texas and its local chapters, Disability Rights-Texas, parent support groups, and the Texas Department of Aging and Disability (DADS).



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