

Chapter 4

Creating Guardianships

I. Permanent Guardianships

§ 4.1 Purpose of Permanent Guardianship

The court may appoint a guardian for an incapacitated person if it has clear and convincing proof that the person is incapacitated, that it is in the best interests of the proposed ward to have a guardian appointed, that the rights or property of the proposed ward will be protected by the appointment, and that alternatives to guardianship and supports and services available to the proposed ward that would avoid the need of a guardianship have been considered and are not feasible. [Tex. Est. Code § 1101.101\(a\)\(1\)](#). A definition of the term *incapacitated person* is found at [Tex. Est. Code § 1002.017](#) (see section 4.5 below). A ward is a person for whom a guardian has been appointed. [Tex. Est. Code § 1002.030](#).

The guardian's ability to act in most circumstances will depend on orders of the court. [Tex. Est. Code §§ 1151.102, 1151.103](#). The court will appoint a guardian with either full or limited authority over an incapacitated person as indicated by that person's actual mental or physical limitations and only as necessary to protect and promote the well-being of the person. [Tex. Est. Code § 1001.001](#). The guardianship may be of the person, the estate, or both. [Tex. Est. Code § 1101.151\(a\)](#).

§ 4.2 Alternatives to Guardianships and Supports and Services

Amendments to the Texas Estates Code enacted by the 2015 Texas Legislature clarify that alternatives to guardianships and available supports and services that would avoid a guardianship should be a primary focus of the applicant, attorneys and guardians *ad litem*, and the court in a guardianship proceeding. For a greater discussion of alternatives to guardianship, see chapter 3 of this manual. For further information on alternatives to guardianship, see the current edition of State Bar of Texas, *Guardianship Alternatives*.

§ 4.3 Guardian of Person

A guardian of the person with full authority over an incapacitated person has the right to have physical possession of the ward and to establish the ward's legal domicile; the duty to provide care, supervision, and protection for the ward; the duty to provide the ward with clothing, food, medical care, and shelter; the power to consent to medical, psychiatric, and surgical treatment other than inpatient psychiatric commitment of the ward; the power to establish a trust for the ward to be eligible for medical assistance; the power to sign documents necessary or appropriate to facilitate the employment of the ward if the guardian was appointed with full authority over the ward or if the power is specified by court order for a guardian with limited powers over the ward; and the power to transport the ward to an inpatient mental-health facility for a preliminary examination. [Tex. Est. Code § 1151.051](#). However, some of these powers may require specific court authority. The powers of a guardian with limited authority over an incapacitated person are those set forth in the order of appointment or any subsequent orders. [Tex. Est. Code § 1101.152](#). A report on the condition of the ward must be filed at the end of each year of the guardianship. [Tex. Est. Code § 1163.101](#). See sections 8.57 through 8.59 and form 8-35 in this manual.