

Statutes, Rules, Ethics and Standards for Guardians

The adjudication and administration of guardianships in Texas are entirely a creature of state statute. The Texas Estates Code is the statutory authority for the creation, administration, and termination of guardianships. The Judicial Branch Certification Commission, which is a division of the Texas Office of Court Administration, is responsible for creating rules for all guardians.

Texas Estates Code

All guardians should be familiar with Section 3 of the Texas Estates Code as it is the statutory basis for everything a guardian must or should do. The Texas Estates Code can be found online at:

<https://statutes.capitol.texas.gov/Docs/SDocs/ESTATESCODE.pdf>

CERTIFICATION RULES

The rules applicable to guardians, professional guardians, and guardianship programs are found in Chapter 155 of the Texas Government Code. It is pursuant to the statutory authority set forth in Chapter 155 that the Texas Supreme Court adopts rules that govern the certification of individuals providing guardianship services. The Judicial Branch Certification Commission (JBCC) is the authority that regulates the guardianship certification process.

The JBCC is also required to adopt minimum standards for the provision of guardianship services or other similar but less restrictive types of assistance or services by guardianship programs; private professional guardians; and the provision of guardianship services by the Health and Human Services Commission Office of Guardianship. The Judicial Branch Certification Commission's website is at:

<http://www.txcourts.gov/jbcc/>

The following individuals must be certified as guardians in Texas:

- (1) An individual who is a private professional guardian and is compensated for providing guardianship services,
- (2) An individual who will provide those services to a person with a guardian by a private professional guardian on the guardian's behalf (such as an employee of the private professional guardian); and
- (3) an individual, other than a volunteer, who will provide those services or other services to a person subject to guardianship by a guardianship program or the Health and Human Services Commission Office of Guardianship on the program's or department's behalf.

The JBCC is responsible for developing and maintaining the application process, as well as implementing the Supreme Court's rules and procedures for issuing, renewing, suspending, or revoking guardianship certification.

Complaints against a Certified Guardian

The Judicial Branch Certification Commission Compliance Section investigates complaints against certified guardians. The JBCC's investigation process is outlined at the JBCC website.

[Read all the JBCC's Rules here.](#)

Registration of Guardianship Programs

Effective September 1, 2018, a Court cannot appoint a guardianship program to be guardian of an incapacitated person if the program is not registered with the JBCC. The JBCC has developed rules for registration of guardianship programs, including the adoption of minimum standards to monitor and ensure the quality of guardianship and related services for the operation of guardianship programs. A guardianship program is defined in the Texas Government Code as "a local, county, or regional program that provides guardianship and related services to an incapacitated person or other person who needs assistance in making decisions concerning the person's own welfare or financial affairs." The guardianship program must register with and hold a certificate of registration issued by the JBCC, and is subject to rules and procedures for issuing, renewing, suspending, or revoking a registration certificate pursuant to rules adopted by the Texas Supreme Court.

Registration of Guardianships

All guardianships, regardless of whether the guardian is a family member or a professional, must be registered with the JBCC. The link to registering a guardianship is:

<http://www.txcourts.gov/jbcc/register-a-guardianship/>

Training and Criminal Background Checks required for ALL Guardians

The JBCC is to obtain a criminal history on each applicant for guardianship in cases that were either pending on or initiated after June 1, 2018. The background checks are from the Department of Public Safety or the Federal Bureau of Investigation identification division. The criminal background check is fingerprint-based if the liquid assets of the estate exceed \$50,000.00, and name-based if less than \$50,000.00. The criminal history record information obtained is privileged and confidential and is for the exclusive use of the commission and the court with jurisdiction over the guardianship. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order or consent of the individual being investigated. Use of the criminal history record information by the JBCC and the courts is extremely limited.

The criminal background checks are processed through the application process in the court in which the guardianship proceeding is filed.

Further information on the criminal background check process can be found at:

<http://www.txcourts.gov/jbcc/register-a-guardianship/criminal-history-information/>

CORE VALUES/CODE OF ETHICS

The Code of Ethics was developed by the Texas Supreme Court pursuant to authority in the Texas Government Code. The purpose of the Code of Ethics is “to protect the interests of incapacitated persons in Texas by ensuring that certified guardians and guardianship programs provide guardianship services in a professional and competent manner.” The Code of Ethics references, with some elaboration, ten ethical principles with which certified guardians and guardianship programs must comply. Although not applicable to family or lay guardians, the Code of Ethics provides considerable guidance for all guardians when making decisions pursuant to a court appointment as guardian.

Each ethical principle constitutes a segment of the theoretical and practical foundation of responsible guardianship practices.

Independence and Self-Reliance Promoted. Guardianships in Texas are designed to grant authority over the person with a guardian only to the extent necessary to promote and protect the person’s well-being. To that end, the guardian must seek to encourage the development or maintenance of maximum independence and self-reliance to the extent consistent with the person’s health and safety and financial circumstances. The eventual goal, if possible, should be self-sufficiency and eventual modification or even termination of the guardianship when warranted.

Fiduciary Relationship. A guardian is a fiduciary for the person under the guardian’s care and must exhibit the highest degree of loyalty and fidelity in the guardian’s relations with the person. The fiduciary relationship exists with regard to personal as well as financial decision-making. If a guardian breaches these fiduciary duties the person with a guardian can be physically, emotionally, and/or financially harmed, and the guardian can be subjected to liability, damages, and removal as guardian.

Confidentiality. A guardian must treat information relating to the person under the guardian’s care as confidential and may disclose such information only with the consent of the person or, if the person cannot give consent, only as necessary to promote and protect the person’s well-being. To the extent not inconsistent with the person’s direction and best interests, or to the extent necessary to respond to a complaint or investigation, a guardian may disclose information about the person’s condition to the person’s family and friends or to an appropriate government entity. A guardian must disclose specific information about health and residence, to the person’s spouse, parents, siblings and children, unless the court relieves the guardian of the duty to do so in accordance with this provision.

Preferences Generally Respected. When making decisions on behalf of a person with a guardian, a guardian must strive to act in accordance with the known or ascertainable preferences of that person, including preferences expressed in valid estate planning documents, unless to do so would cause substantial harm to the person or property, in which case the guardian should make decisions that are in the person's best interest. A guardian must regularly visit and, to the extent feasible, confer with the person regarding decisions to be made in and on the person's behalf. To the extent consistent with the person's direction and best interests, a guardian may confer with the person's family and friends concerning the person's preferences.

Duty of Competence. A guardian of the person must make reasonable and informed decisions about the residence, care, treatment, and services for the person with a guardian. A guardian of the estate must take care of and manage the estate as a prudent person would manage the person's own property unless relevant law imposes a higher standard of care. In either case, a guardian must exercise reasonable diligence to remain informed about options available to promote the person's independence and self-reliance. A guardian must refrain from making decisions outside of the scope of authority granted to the guardian by law or court order.

Less Restrictive Alternatives Preferred. In determining the person's residence, a guardian must strive to select a residence that represents the least restrictive environment available, both practically and financially. In making decisions relating to the person's health, the guardian must strive to select care, treatment and service options that represent the least restrictive form of intervention available, both practically and financially. In either event, the guardian must give due consideration to the person's preferences and well-being. For example, this means that a guardian should care for a person in the person's home and not in a care facility if the person would be most content at home and home placement is practical and financially feasible.

Avoidance of Conflicts of Interest and Self-Dealing. A guardian must avoid conflicts of interest and refrain from personally engaging in transactions with the person under guardianship and other forms of self-dealing, except in a manner authorized by law. A guardian may be most comfortable hiring a relative to assist the person with a guardian, but this practice could be considered a conflict of interest. A guardian may also want to gift or sell the home or other property of the person with a guardian to the guardian, a relative, or friend. Again, it would be a conflict of interest for the guardian to do so. In these situations, the guardian should seek court approval to engage in these transactions.

Responsibility to Keep Court Apprised of Condition of Person or Property. A guardian must keep the court monitoring the guardianship apprised of the guardian's and the person with a guardian's whereabouts and the condition of the person's person and estate, including timely filing reports and accounts as required by law or court order. The guardian should err in favor of consistently updating the court regarding significant, material changes as they occur.

Responsibility to Seek Modification or Termination of Guardianship. A guardian must seek modification of the terms of the guardianship or termination of the guardianship when appropriate to promote the independence and self-reliance of the person with a guardian. Every year, upon the filing of the annual report and annual accounting, the guardian must report on whether the guardianship should continue, be modified, or be terminated. Upon termination of a guardianship, the guardian must settle and close the guardianship competently and without unnecessary delay.

Responsibility to Manage Caseload. A guardian must not accept a new appointment if doing so would substantially and adversely affect the guardian's ability to fulfill duties to any person already under the guardian's care by a court. When a guardian can no longer effectively perform the duties of the guardian, the guardian must take necessary steps to alert the court of the need for the appointment of a successor guardian.

The Code of Ethics may be found at:

<http://www.txcourts.gov/media/1401036/Code-of-Ethics-and-Order-GC-Final-2016.pdf>

Minimum Standards for Certified Guardians

The Texas Supreme Court has also approved minimum standards for all certified guardians. Family and lay guardians should become familiar with the Minimum Standards because the standards typically articulate common sense approaches to decision-making and are also often drawn directly from the Texas Estates Code.

The standards are written basically in three categories: standards that apply to guardian of the person, standards that apply to guardian of the estate and standards that apply to both.

The Minimum Standards for Guardianship Services may be found at:

<http://www.txcourts.gov/media/1401036/Code-of-Ethics-and-Order-GC-Final-2016.pdf>