

# **TEXAS ALTERNATIVES TO A GUARDIANSHIP**

T.P.C §602 mandates the use of less restrictive alternatives to a guardianship when available. The following alternatives are intended to provoke your constructive thought in this area.

## **ALTERNATIVES TO A GUARDIANSHIP OF THE PERSON**

### **Texas Health and Safety Code**

1. §166.031, et. seq. Directive To Physician. Provides a resolution to life sustaining or termination issues.
2. §166.082, et. seq. Out Of Hospital Do Not Resuscitate Order. Provides for the resolution of life termination issues.
3. §166.151 Medical Power Of Attorney. Provides for an agent to make health care decisions for the principal. See, §135.001 C.P.R.C.
4. §313.001, et. seq. Consent To Medical Treatment Act. Provides a medical resolution in non-emergency situations.
5. §462.021, et. seq. Voluntary Treatment Or Rehabilitation. Provides for a person's voluntary admission to a treatment facility for chemical dependency.
6. §573.011, et. seq. Application For Emergency Detention. Provides for a person's emergency apprehension and detention at a mental health facility when evidencing mental illness.
7. §591.002 Persons With Mental Retardation Act. Provides for state assistance in placement, training, and treatment of the mentally retarded.
8. §597.041 Surrogate Decision Making For Mentally Retarded Persons. Provides Resolutions for those housed in an intermediate care facility (ICF/MR) regarding medical and other decisions.
9. §773.008 Emergency Medical Treatment Act. Provides for patient's implied consent in life threatening emergency situations.

### **Texas Family Code**

§151.003 Rights And Duties Of Parent. Provides substantive listing of parental rights without the necessity of a guardianship.  
154.301, et.seq. Support For A Minor Or Adult Disabled Child. Provides for post majority support of a disabled child if the disability existed when a minor.

### **Texas Education Code**

§25.031, et.seq. Assignments And Transfers. Provides guidelines for transfer and admissions of non-resident child. Caveat, see T.P.C. §684 (b)(3).

## **LIMITING THE EFFECTS OF ANY GUARDIANSHIP**

### **Texas Probate Code**

1. §693(b) Enumerated Powers In Guardianship Order. Provides for ward to retain powers in areas of functional capacity.
2. §694A Restoration Or Guardianship Modification. Provides for termination or modification of existing guardianship.
3. §677A Parental Written Declaration For Appointment Of Their Children's Guardian. Provides for parental choice of future guardian appointment.
4. §679 Designation Of Guardian Before Need Arises. Provides the declarant a mechanism to disqualify named persons from serving as guardian.
5. §703(e) Safekeeping Or "Freeze" Agreements. Provides mechanism to minimize bond expense.
6. §745(a) Closing A Guardianship Estate. Provides seven (7) mechanisms to close a guardianship of the estate.
7. §745(b) Direct Payment Of Income To Third Party. Provides for ward's negligible income to be paid to third party without liability to account for same.
8. §745 (c) Minor Ward's Estate. Provides for deposit into court registry an estate of \$25,000.00, or less, and thereafter managed per §887.
9. §867 Creation Of Management Trust. Provides for professional management and bond reduction.

### **Texas Family Code**

1. §1.104 Spousal Capacity. Provides mechanism for removal of disabilities by marriage.
2. §31.001 Removal Of Disabilities Of Minority. Provides mechanism for removal of self-supporting minor's disabilities.

## **ALTERNATIVES TO A GUARDIANSHIP OF THE ESTATE**

### **Texas Probate Code**

1. §482 Durable Power Of Attorney Act. Provides for a third party to conduct the business affairs of the principal.
2. §883 Spousal Management Of Community Property. Provides for non-incapacitated spouse to manage community estate.
3. §885 Receivership. Provides relief for an estate in danger of injury, loss or waste.
4. §887 Payment Of Claims Without Guardianship. Provides for a \$50,000.00 or less debt due an incapacitated person to be paid to the county clerk.
5. §889 Parent's Sale Of Minor's Property. Provides a mechanism for a parent to sell a minor's interest in property not exceeding \$50,000.00.
6. §890 Sale Of Ward's Property Without Estate Guardianship. Provides a mechanism for the guardian of the person to sell a ward's property not exceeding \$50,000.00.

### **FEDERAL STATUTES**

1. 38USC §5502(a)(1) Veterans Benefits Fiduciary. Provides for the appointment of a person to manage a veterans pension benefits.
2. 42 USC §1383 (a)(2) Representative Payee. Provides for Social Security Administration to appoint a person to manage social security benefits.
3. 42 USC §1396 p (1)(d)(4)(B)(i) & (ii) Medicaid Qualification Trust [Miller Trust]. Provides mechanism for a person/ward to qualify for Medicaid in a nursing home where their income exceeds program approval.

### **Texas Rules of Civil Procedure**

Rule 44. Provides for a third party, e.g. parent, to maintain a suit for the "minor" child. Provision for lunatics, idiots, or non-compos mentis' probably unconstitutional. See also, Rule 173.

### **Texas Property Code**

1. §111-115 Provisions Applicable To Trusts. Provides for the creation and operation of a Living Trust by a ward with capacity
2. §141.001, et.seq. Transfers To Minor Act. Provides for the appointment of a custodian to receive assets attributable to a minor.
3. §142 Management Of Property. Provides for the investment of funds stemming from a judgement.

### **Texas Family Code**

§151.003 Rights And Duties Of Parent. Provides substantive listing of parental rights without the necessity of a guardianship.

**COMPLIMENTS OF  
JUDGE KATHLEEN S. STONE  
HARRIS COUNTY PROBATE COURT 1**