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**

1. §151.003 **Rights And Duties Of Parent.** Provides substantive listing of parental rights without the necessity of a guardianship.
2. §315.301, 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**


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. 38 USC §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.