



ALTERNATIVES TO GUARDIANSHIP

Guardianship is a legal tool, which allows a person to make decisions for another person. It removes the civil rights and privileges of a person by assigning control of a person's life to someone else. Although the state directs a court to “design a guardianship to encourage the development or maintenance of maximum self-reliance and independence of the incapacitated person,” it is not uncommon for courts to create full guardianships, which deprive persons with disabilities of the right to make fundamental decisions about their lives.

The vast majority of people with disabilities, including those with intellectual and developmental disabilities are able to make important decisions with or without the provision of supports and services and should be given the opportunity to avoid or limit guardianship through alternatives, including supported decision-making, which would allow a person with a disability to select a person or persons to help make decisions that would typically be made by a guardian.

Alternatives to Guardianship:

- An advanced directive under Chapter 166, Health and Safety Code
- A durable power of attorney under Section 751.002, Estate Code
- A declaration for mental health treatment under Chapter 137, Civil Practices and Remedies Code
- Appointment of a representative payee under Section 807(a), Social Security Act
- A joint bank account
- A management trust under Chapter 867, Subpart N, Estate Code
- A special needs trust that allows an individual with disabilities to have funds available for certain expenses while protecting eligibility for public benefits and access to care and services
- Designate a guardian before the need arises under Section 1104.101, Estate Code
- A supported decision-making agreement that would provide an informal alternative that involves friends and family instead of specific court-appointed substitute decision-makers.
- Formal and informal services and supports that enable individuals to meet needs for food, clothing, or shelter, care for physical or mental health, manage financial affairs or to make personal decisions regarding residence, voting, operating a motor vehicle and marriage.
- Alternate forms of decision-making may be developed based on person centered planning which is a process directed by the individual with long term care needs, intended to identify the strengths, capacities, preferences, needs and desired outcomes of the individual.

Recommendation: Many of the alternatives listed above already exist in statute but they are located throughout the code and are not referenced in one place. Listing these alternatives after the guardianship purpose statement with a directive to the court to determine whether alternatives could help meet the needs of the person could avoid or limit guardianship and the loss of the individual's civil rights.

SOME ALTERNATIVES TO GUARDIANSHIP

Supported
Decision
Making

Representative
Payee

Power
of
Attorney

Special
Needs
Trust

Person
Centered
Thinking