

By definition, a guardian is a person who has been entrusted by the law for the care of another person or for his estate or for both. A guardian is a court-appointed person or entity that makes decisions on behalf of an incapacitated person. This disability may be caused by mental illness, developmental disability, age, accident or other causes.

Guardianship is a legal relationship between a competent adult and a person over the age of 18 (a ward), whose disability has caused incompetence (USALAW2003). Guardianship is designed to protect vulnerable persons from abuse, neglect (including self-neglect), and exploitation. Guardianship provides for the person's care and management of his or her money while preserving, to the largest extent possible, that person's independence and right to make decisions affecting his or her life (TGA2003).

The guardian may be a family member, friend, neighbor, or a professional guardian (an unrelated person who has received specialized training) or, in some cases, a corporate guardian such as a bank, a public guardian, or a public or private non-profit corporation. While family members will continue to provide most of any necessary guardianship assistance, an increasing number of incapacitated Texans lack family members to serve as their guardian. The law, F.S. 744.309, requires that the guardian should be:

- Over the age of 18
- Capable of discharging his duties as guardian
- Not convicted of a felony

- Not a service provider to the ward
- Not an employee of a service provider to the ward
- Not a creditor of the ward
- Also, non-residents may serve as guardian if they fulfill a certain criteria. (USALAW2003)

The rapid population growth in Texas has been accompanied by a corresponding and ever increasing need for guardianship services. The overall population in Texas grew 23% between 1990 and 2000, an increase from 17 million to almost 23 million residents. Texas is now the second largest populated state in the country. The population growth from 2002-2007 is expected to be an additional 1.7 million Texas residents, which is an increase of 8%.

Requests for guardianship and less restrictive alternative services assistance continue to increase in number in the continuum of critical, essential, and, often complex long-term care needs. By 2030 the number of Texans age 60 and older is expected to increase by 176%. The 65 and older age group equaled 10% of the population in 2002 and is projected to constitute 18% of the population in 2040 and, subsequently, potentially more individuals in need of guardianship.

An aging population is likely to result in a larger population of individuals with disabilities. Projected increases in individuals age 65 and older with age related conditions such as Alzheimer's disease and dementia will require the appointment of a guardian, or the assistance of less restrictive alternatives to guardianship

such as money management representative payee. The number of Texans age 85 and older is expected to double between 2000 and 2010.

The demand for long-term care services will increase as the number of elderly individuals continues to increase in Texas. Many of the individuals in this age group may outlive several generations of their family, and will lack family members and friends who are able to provide needed support and assistance (HHSC 2002). Many of these individuals reside in rural communities and currently lack total access to guardianship and less restrictive alternative programs.

When a guardian has been chosen, and the guardian has agreed to accept the responsibility, family members and others close to the family should be apprised of the relationship. This will avoid any challenges to the guardianship relationship later on. A developmental disability or mental illness is not by itself sufficient reason to declare someone incompetent. In addition, a person may not be declared incompetent simply because it saves someone money or because the disabled person acts or uses personal money in ways that seem odd to someone else.

The Probate Code dictates and prioritizes persons who are eligible to become guardians. The ward's spouse is entitled to be the guardian before any other individual. If there is no spouse or if the spouse declines or is unable to serve, then the next of kin is the next eligible individual to serve as guardian. If more than one person is entitled to serve in the same degree of kinship, the court appoints the best-qualified person. If there is no family member

willing or able to serve, the court may appoint any disinterested person, bank, financial institution, or guardianship program. The Texas Department of Protective and Regulatory Services or other agencies may be appointed as guardian for an incapacitated person who does not have a family member or friend who can serve in this capacity.

When determining whom to appoint as guardian, the court will consider the incapacitated person's best interest. The court will give consideration to the ward's preference and may appoint this person if he or she is not disqualified. It is important to note at this point, Texas residents may designate a guardian prior to incapacity by completing a brief statutory form. Although the problem of abuse of the elderly and adults with disabilities has been widely recognized only in recent decades, some estimate it may be as common as child abuse. Abuse results in scratches, cuts, bruises, burns, broken bones, bedsores, confinement, rape or sexual misconduct, and verbal and psychological abuse (NGA2003).

The growing population of elderly people and growing awareness of adult abuse have dramatically increased reports of abuse, neglect, and exploitation. The number of cases investigated by Adult Protective Services (APS) in Texas has increased 121 percent between 1991 and 2001.

In 2001, Adult Protective Services completed 56,170 investigations of abuse, neglect, or exploitation involving adults in Texas. Of these, 40,559 were confirmed.

Adult Protective Services Case-Related Statistics

	Bandera	Bexar	Comal	Kendall
TOTAL APS INTAKES	53	4344	174	31
Total APS Completed Investigations	48	4113	160	27
Validated APS Investigations	39	3049	104	22
APS Clients Receiving Services	54	3600	170	26

An investigation begins within 24 hours of receiving a report. Perpetrators of adult abuse are almost always someone the victim knows. In FY 2002, APS completed 56,906 investigations. APS confirmed 7,149 cases of family violence perpetrated by a family or household member. Nearly 90 percent of perpetrators are related to the victim. When maltreatment is confirmed, this program provides and arranges for services to alleviate abuse, neglect and exploitation.

Exploitation is misusing the resources of an elderly or disabled person for personal or monetary benefit. This includes taking Social Security or SSI (Supplemental Security Income) checks, abusing a joint checking account, and taking property and other resources. Abused elderly or disabled persons may be isolated or ill; they may lack a capable or willing caregiver, or the resources to meet their basic living requirements. Any aged or disabled adult who is in a state of abuse, neglect, or exploitation is eligible to receive adult protective services. Victims of abuse, neglect, or exploitation may receive short-term services such as emergency shelter, home repair, meals, transportation, help with financial management, home health services, and medical and mental health services (PRS2002).

The Guardianship Alliance of Texas is the Health and Human Services Commission (HHSC), HHSC initiative that supports the legislatively mandated tasks related to guardianship issues assigned to HHSC. The distribution by the Texas Guardianship Alliance, with the advice of the Guardianship Advisory Board, of \$457,000 in grant funds from 1998-2002 has generated proposals from 31 programs, and 12 new local guardianship and less restrictive alternative money management programs have been started. The maximum grant awarded was \$22,000, and the minimum grant awarded was \$5,000. Twelve local guardianship programs existed in the State in 1998. Twenty-four guardianship and money management programs exist in 2002, with the establishment of a 25th money management pending at this time. A 100% increase in the

number of programs in Texas has occurred since the creation of the Board and Alliance at HHSC (HHSC2002).

The APS guardianship program is a small part of a larger system of guardianship services statewide and remains committed to seeking external resources for guardianship whenever possible. APS provides direct guardianship services only as the last resort when no other guardian is available or appropriate and only to resolve abuse, neglect or exploitation of the incapacitated adults.

Local guardianship programs are vital to meeting the ever-increasing need for guardianship in Texas. Adult Protective Services works with family members, the courts, interested parties, local guardianship programs, private guardians and contractors in an on-going effort to cultivate and facilitate the provision of guardianship services at the community level. (PRS2002).

Other organizations that are involved in guardianship matters include:

- Bexar Area Agency on Aging
- Family Service Association
- Bexar County Housing and Human Services
- Jewish Family and Children's Services
- United Way of San Antonio
- Alamo Area Council of Governments.

Reference:

HHSC Guardianship Advisory Board Report on the Development of a Statewide Guardianship System for Texas 2002 [online] Available: http://www.hhsc.state.tx.us/si/gat/reports/GAT_rpt_12_2002.html

USALAW: "The Internet Guide to Guardianship" 2003 [online] Available: <http://guardianship.usalaw.com/guardianship.html>

Texas Department of Protective and Regulatory Services (PRS) Annual report (2002) [Online] Available: <http://www.tdprs.state.tx.us/default.asp>

Texas Guardianship Association 2003 [online] Available: <http://www.texasguardianship.org/>

National Guardianship Association 2003 [online] Available: <http://www.guardianship.org/>