



Dallas County Probate Court
Guardianship

Topics Include:

- Guide to Guardian of the Person
- Rights of the Guardian of the Person
- Rights of an Individual under Guardianship
- Frequently Asked Questions
- Annual Report to the court of the well-being of the Ward
- Obtaining Letters
- Visits from the Court
- Report to Credit Bureau to prevent Ward's I.D. theft

INVESTIGATOR'S OFFICE
COURT VISITOR PROGRAM

509 Main Street #217
Dallas, TX, 75202
214.653.7759

To request renewed LETTERS OF GUARDIANSHIP:

DALLAS COUNTY PROBATE COURT

CLERKS OFFICE

214.653.7752

Ward: _____ Cause # PR- _____
ALWAYS REFER TO THE CAUSE # WHEN CALLING THE COURT
Date of Qualification: _____

CHECKLIST FOR GUARDIAN OF THE PERSON

This Checklist is designed to provide you with guidance in carrying out your duties and responsibilities as guardian of the person. This checklist summarizes the matters that are more fully set forth in the **Guide for the Guardian of the Person**. This is only a supplement and not a substitute for legal advice.

Within 20 days of the Order appointing you as Guardian of the Person:

1. Within 20 days of Order appointing you as Guardian of the Person:
 - File your Oath of Office
 - Obtain and file your Bond in the amount set by the Judge.
 -

2. Once your bond has been approved by the Court and your Bond and Oath have been filed with the Clerk:
 - Have your Letters of Guardianship issued by the Clerk.
 -

3. Within 60 days of the anniversary of your Qualification Date each year:
 - File an ANNUAL REPORT OF THE GUARDIAN OF THE PERSON
 - Obtain your renewed Letters of Guardianship from the Clerk.
 -

**Write the date that your bond was approved by the Court
on the front of this booklet.
This is your DATE OF QUALIFICATION.**

GUIDE FOR GUARDIAN OF THE PERSON

You have just been appointed by this Court to a position of great trust and confidence. Your duty is to protect and promote the well-being of the ward, and if possible, to encourage the ward's self-sufficiency. This guide has been prepared as a reference to remind you of deadlines and responsibilities. **It is only a supplement and not a substitute for legal advice**

1. YOUR QUALIFICATION

Even though you have been appointed to take charge of the physical well-being of the ward, you must first "qualify" to become the guardian. It is important that you qualify as quickly as possible after your appointment. To qualify as a guardian of the person, you must satisfy the following requirements within twenty (20) days of the date the Judge signed the order establishing the guardianship:

- take an Oath of Office, which may be taken before the court clerk, a notary public or anyone else authorized to administer oaths in Texas and
- secure a bond in the amount specified by the court order.

If you do not give both your Oath and your bond within twenty (20) days, the court may set aside your appointment.

A bond is a written obligation with monetary penalty which ensures the proper performance of the guardian's duties to the ward. **The law states that a bond is necessary and cannot be waived by the court.** The bond is to provide a source of funds to cure problems in the event you do something wrong.

The court may require a corporate surety bond, a personal surety bond, or a cash bond from the guardian of the person. When posting a cash bond, the guardian of the person must personally pay the full amount of the bond set by the court.

Once you have taken the oath, executed the bond, and the court has approved the bond, you will have qualified as the guardian of the person. Your qualification date is

important because many of your duties must be performed within a certain number of days from your qualification as guardian of the person. Your Date of Qualification is the date (after you have taken the oath) that the judge approves your bond.

2. LETTERS OF GUARDIANSHIP

After qualifying, you may request your letters of guardianship. These letters are evidence of your appointment as guardian of the person when dealing with third persons concerning the ward's affairs. **Please note that the letters expire 16 months from the date of qualification.** Letters must be renewed each year in conjunction with the filing of your annual guardian of the person report (also called an Annual Report of the Person). The letters of guardianship are your “badge of authority” to act on behalf of the ward.

The cost for letters, as of the date this guide was prepared, is \$2.00 per certified document (please check the Dallas County website for the latest fee information). You will need at least one certified copy for your records and one certified copy when applying for any governmental benefits. Most Home and Community Based Services programs will accept copies of the letters.

3. MONTHLY ALLOWANCE

Do not under any circumstances expend guardianship funds on yourself. If you spend funds without the court's approval, you may be subject to removal as guardian and may be held liable for any deficiencies.

The ward may be receiving governmental benefits, either Social Security Disability (SSDI) or Supplemental Security Income (SSI). Texas Medicaid expects the ward to begin paying room and board upon receipt of government benefits. Typically a ward living in the community and receiving funds provided through Texas Medicaid can retain \$85.00 per month of their governmental benefits to be spent on personal needs. The remaining balance is

expected to be paid as room and board to the owner or operator of the residence or to be spent on items to benefit the ward. Please be advised this dollar figure may be revised on an annual basis.

4. YEARLY REQUIREMENTS

Under Texas Estates Code 1163.101 (formerly §743(b) of the Texas Probate Code), you must also file a sworn ANNUAL REPORT OF THE PERSON once a year. There is an Annual Report of the Person form on the Dallas County Probate Courts' website. Under Texas Estates Code 1163.101 and 1163.102 (formerly §743(g) of the Texas Probate Code) it is your responsibility to know when your report is due and to complete and file the report with the court on or about your date of qualification. The report is required each year until you cease to be the guardian. The filing fee is currently \$12.00 unless you filed an affidavit of inability to pay costs. The affidavit is based on the ward's income.

Make copies of the blank Annual Report form and complete it each year with updated information on yourself and your ward. (While it is not mandatory that your attorney assist you in preparing the Annual Report, you may find an attorney's advice helpful in carrying out your duties and responsibilities.) You are responsible for filing the annual reports in a timely fashion.

If you fail to file this report, the court or any person interested in the ward may file a written complaint with the clerk of the court, causing you to be cited to appear and show cause as to why the report was not filed. If the report is not filed and good cause is not shown, the court may fine you up to \$1,000, revoke your letters of guardianship and possibly remove you as guardian. In addition, if you or your attorney fails to satisfy the requirements of the law, you and your bonding company or the sureties on your bond can be held personally liable for all costs incurred in getting the guardianship back on track.

It is no excuse that your attorney has misadvised you or has mishandled the case. You are personally liable for any mistakes and the court may appoint an attorney ad litem to sue you and the surety on your bond, if necessary. You may have the right to sue your attorney, but you will not avoid personal liability.

5. CHANGES IN GUARDIANSHIP OF THE PERSON

IF IN THE PAST YEAR THE GUARDIAN OF THE PERSON HAS RECEIVED ANY OTHER FUNDS FOR THE WARD FROM ANY OTHER SOURCES, INCLUDING BUT NOT LIMITED TO STATE OR FEDERAL BENEFIT LUMP SUM PAYMENTS, AWARDS, INHERITANCE, SETTLEMENTS, CLAIMS, JUDGMENTS, LOTTERY, TRUSTS, MONETARY GIFTS IN EXCESS OF \$500 OR FROM ANY OTHER SOURCE, THE SOURCE(S) AND TOTAL AMOUNTS RECEIVED MUST BE REPORTED TO THE COURT IMMEDIATELY TO DETERMINE IF A GUARDIAN OF THE ESTATE NEEDS TO BE CREATED.

6. CLOSING THE GUARDIANSHIP

The guardianship may be closed by the court if:

- the ward dies,
- the ward is declared by law to be restored to full legal capacity, or
- the court determines that a guardianship of the person is no longer necessary and discharges the guardian (such as when a minor reaches the age of 18).

In order to request that a guardian of the person case be closed, the guardian must complete and file with the court a Final Report of the Guardian of the Person form. A copy of the form can be found on the Dallas County Guardianship web site under the Information for Guardians section.

What happens when the Ward dies?

Although the guardianship will end because of the ward's death, the guardian of the

person is not immediately discharged. If your ward dies, you need to notify the Court Visitor Program immediately by phone 214-653-6446. Additionally, a Final Report of the Guardian of the Person must be filed with the court within sixty (60) days of the ward's death explaining when and where the ward died and to whom the ward's personal effects were given. You may be required to provide a death certificate to the court.

If the ward did not have a separate guardian of the estate and the guardian of the person is unsure who should receive the ward's personal effects, the guardian of the person may wait, if a will is being probated within 60 days of the ward's death, until the court appoints a personal representative of the ward's estate or until the court approves a small estate affidavit. (If the ward also has a guardian of the estate, however, the guardian of the estate should handle the ward's personal effects).

WHAT ARE THE RIGHTS & RESPONSIBILITIES OF THE GUARDIAN OF THE PERSON?

The guardian of the person has the authority to arrange and provide for the physical well-being of the ward, subject to the powers set out in the "order of appointment." As guardian, you must promote and protect the best interests of the ward in the following areas:

Medical decisions - The guardian of the person usually makes arrangements and decisions for the ward's medical, surgical, dental and psychological treatment, and communicates with the ward's doctors, nurses and caretakers; however these powers could be limited by the court. When possible, the guardian of the person should discuss and take into account the ward's preferences in choosing the ward's medical caregivers, such as a primary physician, dentist or ophthalmologist. The guardian of the person may also execute an out-of-hospital Do Not Resuscitate Order (also called as DNR) on the ward's behalf.

The guardian of the person may **not** authorize electroconvulsive therapy, abortion or

sterilization, nor may the guardian of the person commit the ward to a mental hospital unless the ward is less than 16 years old. Such decisions require court authorization. The guardian of the person may transport the ward to a mental hospital with or without the assistance of a peace officer in order to apply for emergency detention if mental illness creates a substantial risk of serious harm to the ward or others. After psychiatric hospitalization and under the recommendation by the ward's doctor, the guardian of the person can authorize forced medications.

JUST BECAUSE YOU HAVE BEEN GIVEN THE RIGHT TO MAKE DECISIONS ON BEHALF OF THE WARD DOESN'T MEAN THE WARD WILL COOPERATE WITH YOU.

What rights I can exercise as a guardian of the person?

Rights a full guardian of the person can exercise include but are not limited to:

- Placement/residential decisions
- Employment decisions
- Dental, medical, and psychological tests and treatment
- Release of records (medical/psychological/etc.)
- Dealing with school district and ARD meetings
- Forced medications after psychiatric hospitalization
- Psychological treatments and psychological medications
- Application for and receipt of government benefits
- Execution of a Do Not Resuscitate Order
- The right to decide domicile, which includes the right to change counties within Texas and the right to move to another state. **If you plan to move to another county or state, you must notify the court in writing.

What rights can I NOT exercise as a guardian of the person without a specific court Order of Authorization?

- Involuntary placement in a mental hospital or facility;
- Approve the administration of psychotropic medication (except under every specific situations);
- Electroconvulsive therapy;
- Abortion; and
- Sterilization.

In what areas can the ward's rights be restricted? (This is a list of example areas and is not intended to be all inclusive.)

- voting,
- driving,
- writing a will/or signing a power of attorney,
- consenting to marriage,
- associating with third persons,
- changing beneficiary designations, and
- entering contracts.

If the ward will not cooperate can the guardian call the police?

While you may have a legal right to make decisions, there can be mechanical difficulties in making a non-cooperative ward comply with those decisions. You cannot call the police to force the ward to take medicine or do what you have told the ward to do. However, if the ward poses a danger to you, others, or him/herself, you can and should call the police.

WHAT ARE THE RIGHTS OF THE WARD AFTER A GUARDIAN OF THE PERSON HAS BEEN APPOINTED?

The ward retains all legal and civil rights and powers except those specifically granted by the court order to the guardian of the person. The court determines the scope of the authority of the guardian of the person based on the degree of the ward's ability to feed, clothe, and shelter him/herself, and to manage his/her medical and financial affairs. The

ward's rights may include, but are not limited to, the following:

- the right to live in an environment free from abuse, one with safe, sanitary, and humane living conditions within the least restrictive environment that meets the ward's needs;
- the right to receive reasonable visitation and phone calls from family and friends;
- the right to be treated with dignity and respect;
- the right to privacy, which includes the right to privacy of the body;
- the right to exercise control over all aspects of life that the court has not delegated to the guardian;
- the right to appropriate services suited to the ward's needs and conditions, including mental health services;
- the right to have explanations of any medical procedures or treatment. This includes information about the benefits, risks, and side effects of the treatment, and any alternative procedures or medications available;
- the right to have personal information confidential;
- the right to petition the court to modify or terminate the guardianship;
- the right to have the guardian consider the ward's personal desires, preferences, and opinions;
- the right to procreate;
- the right to equal treatment under the law, regardless of race, religion, creed, sex, age, marital status, sexual orientation, or political affiliations;
- the right, unless restricted, to execute a will, although the adjudication of incapacity is prima facie evidence that the ward is not competent to execute a will;
- the right to participate without interference in educational, vocational or recreational programs when possible under the restraints of the ward's estate;
- the right personally to seek employment, unless restricted;
- the right to determine a residence, unless the court finds the ward totally incapacitated or the court's order specifically finds the ward not capable of determining a residence;
- the right to drive, unless the court's order specifically finds the ward is not

capable of driving;

- the right to vote, unless the court's order specifically addresses the issue; and/or
- the right to marry, unless the court finds the ward totally incapacitated.

If the ward gains capacity, the guardian of the person has a duty to report the change to the court, which may restore any rights the ward can handle. A ward also has the right to submit an informal letter asking the court to restore his or her capacity and rights and no one can interfere with this request. Restoration of Rights requires a medical evidence letter from a licensed medical doctor.

FREQUENTLY ASKED QUESTIONS

1. Can the guardian of the person make END-OF-LIFE decisions for the ward?

Yes. The guardian of the person can make end-of-life decisions to withdraw or withhold the ward's medical treatment. The guardian of the person may also execute an out of hospital Do Not Resuscitate Order (DNR) on behalf of the ward, or may revoke an out of hospital DNR at any time without regard to the ward's capacity by orally stating an intent to revoke it, destroying the order form, or removing a DNR identification device, such as a bracelet or necklace, from the ward.

Similarly, the guardian of the person may revoke a ward's directive to physicians at any time without regard to the ward's capacity by orally stating the intention to revoke it, by signing a written revocation, or by destroying the directive or instructing someone else in the ward's presence to destroy it.

2. Does the guardian of the person have to tell the rest of the family how the ward is doing medically?

The guardian of the person may keep the ward's immediate family members and friends advised of all medical issues relating to the ward when doing so would benefit the ward. The guardian of the person may also request and consider family input when making medical decisions for the ward. The guardian of the person is the sole and final decision-maker with respect to the ward's medical care unless the decision requires the court's approval or the order of appointment allowed the ward to make those decisions.

3. Can I consent to abortion or sterilization?

Whether or not you are a guardian, you **cannot** consent to an abortion or sterilization of the ward except under very narrow circumstances and you must have court approval **before** consenting. Sterilization or abortion requires an order from the court.

4. Can the Guardian of the Person consent to psychiatric testing and inpatient treatment for mental illness on behalf of the Ward?

Under Texas Estates Code 1151.052 (formerly §770(b)(d) of the Texas Probate Code), the guardian of the person is not authorized to consent to inpatient psychiatric commitment for a ward. In an emergency, the guardian of the person may apply for temporary emergency detention if he or she perceives an immediate threat to the ward's safety or the safety of others. A court order is required to commit the ward to inpatient psychiatric treatment, however a guardian of a person can transport the ward to an inpatient facility for a preliminary examination under Chapter 573 of the [Texas Health & Safety Code](#).

5. Does a guardian of the person have to consider the ward's preferences when making decisions?

The guardian of the person should consider the ward's preferences when making decisions, but the guardian of the person is the final decision maker for the ward, even if the ward disagrees with the decision. The guardian of the person must always consider the best interest of the ward.

6. Who decides the visitors of the ward?

Unless otherwise authorized by court order, the guardian of the person has the authority to prevent only those visits that might be harmful or dangerous to the ward. The ward is entitled to reasonable visitation with family and friends as long as there is no danger to the ward. A guardian of the person who wrongfully interferes with the ward's right to see family and friends violates the duties of the guardian of the person.

7. How do I keep bad people away from the ward?

The guardian of the person is charged with protecting and promoting the well-being of the ward. If a person is exploiting or abusing the ward, the guardian of the person should protect the ward by notifying the court and following the steps outlined above for incidents

of suspected abuse. If necessary, hire an attorney and have a restraining order taken out against the bad actors. If the ward is not being abused, the guardian of the person should not selfishly interfere with the ward's visits from family or friends.

8. Does the ward have to live with the guardian of the person?

No. The guardian of the person determines the ward's place of residence and monitors the ward's living conditions to ensure the ward's health and safety.

9. Can the guardian of the person move the ward out of the county? Out of the Texas?

Unless the guardian of the person's authority is limited by court order, the guardian of the persons' right to determine domicile includes the right to move the ward out of the county or even out of state. However, the guardian of the person should notify the court immediately of a change of address out of the county or state.

10. Does the Guardian of the Person have to notify the Court if he or she moves or has changed phone numbers?

The guardian of the person must inform the court of any change of address and telephone number. The guardian of the person must submit an annual report to the court that includes the guardian's current name, address and telephone number. The court may remove a person as guardian upon finding that the guardian of the person has been eluding service or the guardian of the person's whereabouts have become unknown.

11. Are there other times I must notify the court?

Yes, you should notify the court if the ward marries, becomes pregnant, changes names or if the ward's health and safety are at risk.

12. Why won't the court clerks tell me what to do?

The clerks are not lawyers, so they cannot give legal advice.

13. What does the guardian of the person do if they suspect the ward has been abused?

A guardian of the person has a duty to protect the ward. If you suspect abuse, you should immediately report it to Adult or Child Protective Services at 1-800-252-5400. You should take all steps necessary to remove the ward from the source of the abuse.

If the guardian of the person suspects abuse, he or she should:

- visit the ward to assess the situation; determine what happened and when
- Assess the physical condition of the ward, look for injuries, and see if the ward is visibly upset
- Arrange medical treatment for the ward if needed, and move the ward to a safe place, such as a respite facility or nursing home
- Call Adult Protective Services (if the ward is in a group home) or the Department of Health and Human Services (if the ward is in a nursing home or assisted living facility). The guardian of the person should call to report the incident, even if told someone else has already made a report
- Contact the police and meet with them at the site of the incident to file a police report
- Notify the court of the incident. Contact the police department to track progress and advocate for the investigation. Update the court on the progress of the investigation of the incident, where the ward will be living, etc

14. Am I automatically liable for a ward's debts if I am the guardian of the person?

You are not personally liable for expenses related to the ward just because you are the guardian of the person. However, if you sign a contract agreeing to pay a debt, you can be held contractually liable for the debt. Nursing homes and hospitals frequently try to have a guardian of the person sign as a "responsible party" and incur liability. It is up to you to cross out all such language and to write on the admission papers affirmatively that you have no personal liability.

15. If I have a problem, will the Court fix it for me?

The Court appointed you as the guardian. It is your job to be sure the ward's needs are met. It is not up to the Judge to fix problems. For instance, if your ward is being abused in a placement, and you wait for the Judge to fix the problem, the Court will view you as failing to do your job by leaving the ward in an abusive situation.

16. Should I apply for Social Security or any other governmental programs that the ward might be entitled to receive?

Yes. Social Security, Medicaid or any other program for which the ward might qualify should be considered. You may be appointed representative payee of the Ward's governmental benefits and you may use those funds for the benefit of the ward. You will be required to account to the Social Security Administration for those funds, as well as the court.

17. Can I just put the ward's Social Security check in my checking account?

No. If you receive social security as a representative payee, open a separate bank account and place your name for the benefit of the ward on the account. Never put the ward's social security check in your own account. If you do not receive the check as representative payee, you should go apply to the Social Security Administration to be to be appointed as representative payee. It is inappropriate to sign the ward's name to the check made payable to the ward.

18. Can I settle a claim on behalf of the Ward?

Do not settle any claim on behalf of the guardianship without the authority from the probate court. Any claims involving the ward must be brought to the attention of the probate court, and any settlement (even in another county) must be approved by the judge. This includes any claim already pending when the guardianship is filed.

19. If the guardian of the person wants to resign can they just send a letter to the court and quit?

No. A guardian cannot just quit. The guardian of the person must file an application to resign and a Final Annual Report, and BEFORE the guardian can resign, the court must review the application and determine whether or not to accept the request. Often, the court will appoint a successor before accepting the resignation and discharging the previous guardian of the person. This procedure gives the court an opportunity to appoint a successor guardian of the person before discharging the current one, so the ward always has someone to protect his or her interests.

Please note, however, that your duty and liability are not discharged until the court approves your application to resign and discharges you.

20. What do I do if the ward regains capacity?

If the ward regains capacity, you have an affirmative duty to restore all rights that the ward can handle. This change must be reported to the court through pleadings, a doctor's letter, and potentially the doctor's testimony at a hearing.

A ward also has the right to submit an informal letter asking the court to restore his or her capacity and rights no more than once a year. The guardian of the person or any other person must not interfere with the ward's submission of such a letter to the court.

21. What happens to the ward if the guardian of the person dies first?

If the guardian of the person dies the court should be notified immediately. Any interested person may contact the court with that information and file pleadings communicating the death of the guardian of the person, or apply to be appointed as guardian of the person. The guardian's executor or administrator may file the final report of the condition of the ward on behalf of the deceased guardian. This representative should also deliver to the person legally entitled to receive the property all of the property belonging to

the guardianship. If necessary, the court may immediately appoint a successor guardian of the person without citation or notice.

It is important to pre-plan for who might serve in the event that you are no longer able to serve as guardian of the person.

22. Can I appoint my successor?

If you are the parent of a minor child or an adult incapacitated person, you can designate a series of people to serve as successor guardians in the event of your death or incapacity.

23. If the parent of a minor child or incapacitated person dies and I am named as a successor guardian, am I automatically a guardian?

The fact that you are named as guardian in parent's will does not give you any authority. You still have to go to court to be appointed as successor guardian.

24. Do we have to go back to court to change guardians?

Yes. Unless otherwise specified by a Court Order, the guardian of the person remains in office until the ward dies or regains capacity or until the guardian of the person is discharged by the Court. A successor guardian of the person may be appointed by the Court in the following situations:

- when the Court accepts the resignation of the guardian of the person and the ward still needs a guardian
- any interested person may file a petition for the guardian of the person's removal based on the guardian's incapacity, misconduct or failure to comply with the Court's requirements
- the Court may modify the guardianship, institute removal action if necessary and appoint a successor guardian of the person on its own motion.

After you have submitted your Annual report each year, to obtain renewed **Letters of Guardianship**, send a self-addressed stamped envelope with a request for letters and a check for \$2.00 for each letter requested to:

DALLAS COUNTY CLERK
PROBATE DEPARTMENT
2nd Floor, Records Building
509 Main Street
Dallas, TX 75202-3504

If you have an affidavit of inability to pay, note that in your written request and do not include any monies.

If you have the ability, Annual Reports can also be filed electronically. This requires access to specific court systems and special software.

To look up your court case on-line go to: www.dallascounty.org

Once on the website,

---On-line services
---Record Searches
---Continue
---Probate

Scroll arrow to display menu choices

--- All County Probate Courts
--- County Probate Courts

Then enter the court cause number [PR-XX-XXX-X]

What does the cause number mean?

- PR > Probate Record
- PR-XX > is the year the case was filed with Dallas County
- PR-XX-XXXX > the sequential filing number assigned to this case
- PR-XX-XXXX-X > the last number indicates the Court assignment

For example: PR-88-251-3 means it was filed in 1988, 251st case filed that year, assigned to Court 3

For information regarding Court Visits contact Elizabeth Hart,LMSW,TxCG
Dallas County Probate Court Investigator & Chief Visitor
Contact #: 214-653-7759

The Big Three Credit Bureaus
Security Freeze

Consider asking the credit reporting agencies to place a “security freeze” on the Ward’s credit file. When this freeze is added to the Ward’s report, all third parties, such as credit lenders or other companies (whose use is not exempt under law) will be unable to access the Ward’s credit report without your permission. Each credit reporting agency has its own process and fee for initiating a security freeze, so you should contact them individually.

Equifax

P.O. Box 7402741
Atlanta, GA 30374
www.equifax.com

Report Credit Fraud:
(800) 525-6285
<https://www.alerts.equifax.com>

Request Credit Report:
(800) 685-1111

TransUnion

P.O. Box 2000
Chester, PA 19022
www.transunion.com

Report Credit Fraud:
(800) 680-7289

Request Credit Report:
(800) 888-4213

Experian (TRW)

P.O. Box 2002
Allen, TX 75013
www.experian.com

Report Credit Fraud:
(888) 397-3742

Request Credit Report:
(888) 567-8688

PROTECT YOUR WARD’S CREDIT IDENTITY. FREEZE HIS/HER SOCIAL SECURITY NUMBER BY REPORTING THE GUARDIANSHIP TO THE BIG THREE CREDIT BUREAUS.