

Texas is the first state to recognize supported decision-making as alternative to guardianship

HUSCH BLACKWELL

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Effective Sept. 1, 2015, there are significant changes to **Texas** Guardianship **laws**. For the first time, probate courts must consider alternatives to guardianship, and supports and services available to the proposed ward before a guardianship is created. Two new alternatives to appointing a guardian now exist: Designation of Guardian Before the Need Arises and Alternate Forms of **Decision-Making** Based on Person-Centered Planning; and **Supported Decision** Making Agreement. *Tex. Est. Code §§ 1002.0015 & 1357.001.*

The law now includes a new section on Supports and Services, defined as available formal and informal resources and assistance that enable an individual to:

1. Meet his/her needs for food, clothing, or shelter;
 2. Care for his/her physical or mental health;
 3. Manage his/her financial affairs; or
 4. Make personal decisions regarding residence, voting, operating a motor vehicle, and marriage.
- Tex. Est. Code § 1002.031.*

Before Appointing a Guardian, the probate court must find by clear and convincing evidence that alternatives to guardianship and supports and services have been considered and determined not to be feasible. If the court grants a Limited guardianship, the court must specifically state whether the proposed ward lacks the capacity with or without supports and services to make personal decisions regarding residence. *Tex. Est. Code § 1101.101(a)(D) & (E); (c).* In addition, an Order for Full Guardian must specify that the ward does not have the capacity to make personal decisions regarding residence. *Tex. Est. Code § 1101.151(b)(5).*

Before appointing a guardian, the court must make a reasonable effort to consider the ward's preference of the person to be appointed guardian regardless of whether the person was designated by the ward before the need arises. A guardian has the right to decide where the ward resides but may only place a ward in a more restrictive placement if the guardian provides notice to the court, the

ward and any person who has requested notice and the court orders the placement after a hearing if the ward or another person objects to the proposed placement in a timely manner. *Tex. Est. Code § 1151.051(e)*

A guardianship shall be closed when the court finds that the ward has sufficient capacity with supports and services to care for himself or herself and to manage his or her property. *Tex. Est. Code § 1202.001(b)(2)*. For the first time, a ward or any interested person may petition the court for the full or partial restoration of rights, including the right to decide their residence if he or she has sufficient capacity with or without supports and services. *Tex. Est. Code § 1202.051(3)*

Texas is the first state to recognize **supported decision**-making as a substitute for guardianship. **Supported decision**-making is a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions, including decisions related to where the adult wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with, and where the adult wants to work, without impeding the self-determination of the adult.” *Tex. Est. Code § 1357.002(3)* *The reason for this is to* “to enable an adult to make life decisions, including decisions related to where he/she wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with, and where the adult wants to work, without impeding the self-determination of the adult.” *Tex. Est. Code § 1357.003 (new section)*

For the first time, there is now a BILL OF RIGHTS FOR PERSONS UNDER GUARDIANSHIP. *Tex. Est. Code § 1151.35*, including the right of a ward to complain or raise concerns regarding the guardian or guardianship to the court, including living arrangements, retaliation by guardian, conflicts of interest between the guardian and service providers, or a violation of any of the Bill of Rights; to vote unless restricted by the court, and to petition the court and retain counsel of his/her choice who is certified, to represent ward’s interest in the termination or modification of guardianship, the appointment of a different guardian or other appropriate relief under the Bill of Rights, including transition to a **supported decision**-making agreement.

Husch Blackwell LLP - Deborah C. Hiser