

Tarrant County Probate Court No. 2 Judge Brooke Allen



**Guardianship:
Rush to the
Courthouse
or
Last Resort?**



Thank you IDD Council of Tarrant County!

Probate Court No. 2 – Judge Brooke Allen

Thank you for your time today and allowing us to speak. I hope you have found our presentation informative and helpful. Although you cannot contact me directly about any case and we cannot provide legal advice or recommend an attorney, my staff is here to assist you with general questions. Should you have any general questions about guardianship, alternatives, or supports and services, please contact them.

Yours truly,



Brooke Allen

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Guardianship Court No. 2 – Judge Brooke Allen

▶ Texas Guardianship Law – Clear and Convincing Evidence:

- ▶ Incapacity – substantially unable to provide food, clothing, or shelter for himself, care for his own physical health, manage his own financial affairs or needs a guardian to receive government funds;
- ▶ Alternatives to guardianship that would avoid the need for guardianship have been considered and determined not to be feasible;

AND

- ▶ Supports and services available to the proposed ward that would avoid the need for guardianship have been considered and determined not to be feasible.



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▶ Alternatives to Guardianship:

- ▶ Medical POA
- ▶ Durable Financial POA
- ▶ Declaration for Mental Health Treatment
- ▶ Representative Payee - manage public benefits
- ▶ Joint bank account
- ▶ Management trust
- ▶ Special needs trust
- ▶ Designation of Guardian
- ▶ Alternate forms of decision-making based on person-centered planning
- ▶ Texas Health & Safety Code Chapter 313



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► More Alternatives:

- TEC 1351 – Sale of Property of Certain Incapacitated Persons
- TEC 1352 – Mortgage of Minor's Interest in Residence Homestead
- TEC 1353 – Management and Control of Incapacitated Spouse's Property
- TEC 1354 – Receivership for Estates of Certain Incapacitated Persons
- TEC 1355 – Payment of Certain Claims Without Guardianship
- TEC 1356 – Court Approval of Certain Arts and Entertainment, Advertisement, and Sports Contracts



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► Supports and Services:

TEC 1002.031 – Supports and services are available formal and informal resources and assistance that enable an individual to:

- (1) meet the individual's needs for food, clothing, or shelter;
- (2) care for the individual's physical or mental health;
- (3) manage the individual's financial affairs; or
- (4) make personal decisions regarding residence, voting, operating a motor vehicle and marriage.



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▶ Supports and Services:

- ▶ TEC 1357 – Supported Decision-Making Agreement Act
 - ▶ An adult with a disability may voluntarily enter into a supported decision-making agreement with a supporter to:
 - ▶ Assist in understanding life decisions;
 - ▶ Obtaining necessary documents for life decisions including MEDICAL, FINANCIAL and EDUCATIONAL; and
 - ▶ Assist in communicating the disabled adult's decisions.
 - ▶ Disability means “a physical or mental impairment that substantially limits one or more major life activities.”
- ▶ TEC 1357.056 – provides valid form (need signatures and 2 witnesses or a notary)



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▶ Common Supports and Services:

- ▶ Trusted and supportive family members and friends
- ▶ Medicaid waiver programs
- ▶ Case management services
- ▶ Person-centered planning
- ▶ Free or reduced priced meals, foods, prescriptions and/or delivery services
- ▶ Free or reduced price transportation



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► Supported Decision-Making Agreement

"Supported decision-making" means 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.*" TEC 1357.002(3)



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TEC 1357 – Supported Decision-Making Agreement Act

Purpose

to recognize a less restrictive alternative to guardianship for adults with disabilities who need assistance with decisions regarding daily living **but who are not considered incapacitated persons** for purposes of establishing a guardianship.

Incapacity for Guardianship

substantially unable to provide food, clothing, or shelter for himself, care for his own physical health, manage his own financial affairs or needs a guardian to receive government funds.





TARRANT COUNTY
FORT WORTH, TEXAS 76196-7752

BROOKE ALLEN
JUDGE, PROBATE COURT No. 2

100 WEATHERFORD
AREA CODE 817.884.1415

SUBCHAPTER H. RIGHTS OF WARDS

§ 1151.351. Bill of Rights for Wards

(a) A ward has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where specifically limited by a court-ordered guardianship or where otherwise lawfully restricted.

(b) Unless limited by a court or otherwise restricted by law, a ward is authorized to the following:

- (1) to have a copy of the guardianship order and letters of guardianship and contact information for the probate court that issued the orders and letters;
- (2) to have a guardianship that encourages the development or maintenance of maximum self-reliance and independence in the ward with the eventual goal, if possible, of self-sufficiency;
- (3) to be treated with respect, consideration, and recognition of the ward's dignity and individuality;
- (4) to reside and receive support services in the most integrated setting, including home-based or other community-based settings, as required by Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131, et seq.);
- (5) to consideration of the ward's current and previously stated personal preferences, desires, medical and psychiatric treatment preferences, religious beliefs, living arrangements, and other preferences and opinions;
- (6) to financial self-determination for all public benefits after essential living expenses and health needs are met and to have access to a monthly personal allowance;
- (7) to receive timely and appropriate health care and medical treatment that does not violate the ward's rights granted by the constitution and laws of this state and the United States;
- (8) to exercise full control of all aspects of life not specifically granted by the court to the guardian;
- (9) to control the ward's personal environment based on the ward's preferences;
- (10) to complain or raise concerns regarding the guardian or guardianship to the court, including living arrangements, retaliation by the guardian, conflicts of interest between the guardian and service providers, or a violation of any rights under this section;

(11) to receive notice in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward, of a court proceeding to continue, modify, or terminate the guardianship and the opportunity to appear before the court to express the ward's preferences and concerns regarding whether the guardianship should be continued, modified, or terminated;

(12) to have a court investigator, guardian ad litem, or attorney ad litem appointed by the court to investigate a complaint received by the court from the ward or any person about the guardianship;

(13) to participate in social, religious, and recreational activities, training, employment, education, habilitation, and rehabilitation of the ward's choice in the most integrated setting;

(14) to self-determination in the substantial maintenance, disposition, and management of real and personal property after essential living expenses and health needs are met, including the right to receive notice and object about the substantial maintenance, disposition, or management of clothing, furniture, vehicles, and other personal effects;

(15) to personal privacy and confidentiality in personal matters, subject to state and federal law;

(16) to unimpeded, private, and uncensored communication and visitation with persons of the ward's choice, except that if the guardian determines that certain communication or visitation causes substantial harm to the ward:

(A) the guardian may limit, supervise, or restrict communication or visitation, but only to the extent necessary to protect the ward from substantial harm; and

(B) the ward may request a hearing to remove any restriction on communication or visitation imposed by the guardian under Paragraph (A);

(17) to petition the court and retain counsel of the ward's choice who holds a certificate required by Subchapter E, Chapter 1054, to represent the ward's interest for capacity restoration, modification of the guardianship, the appointment of a different guardian, or for other appropriate relief under this subchapter, including a transition to a supported decision-making agreement, except as limited by Section 1054.006;

(18) to vote in a public election, marry, and retain a license to operate a motor vehicle, unless restricted by the court;

(19) to personal visits from the guardian or the guardian's designee at least once every three months, but more often, if necessary, unless the court orders otherwise;

(20) to be informed of the name, address, phone number, and purpose of Disability Rights Texas, an organization whose mission is to protect the rights of, and advocate for, persons with disabilities, and to communicate and meet with representatives of that organization;

(21) to be informed of the name, address, phone number, and purpose of an independent living center, an area agency on aging, an aging and disability resource center, and the local mental health and intellectual and developmental disability center, and to communicate and meet with representatives from these agencies and organizations;

(22) to be informed of the name, address, phone number, and purpose of the Judicial Branch Certification Commission and the procedure for filing a complaint against a certified guardian;

(23) to contact the Department of Family and Protective Services to report abuse, neglect, exploitation, or violation of personal rights without fear of punishment, interference, coercion, or retaliation; and

(24) to have the guardian, on appointment and on annual renewal of the guardianship, explain the rights delineated in this subsection in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward.

(c) This section does not supersede or abrogate other remedies existing in law.

Ward's Bill of Rights

Information to be furnished to the Ward

Independent Living Center:
(Provides resources and referrals for disabled persons)
Reach Resource Center For Independent Living
1205 Lake Street
Fort Worth TX 76102
(817) 870-9082 VOICE
(817) 870-9086 TDD
www.web2airmail.net/reachdal

Texas Department of Family and Protective Services:
(To report abuse, neglect, exploitation or a violation of rights)
701 W. 51st Street
Austin, TX 78751
1-(800)-252-5400
www.txabusehotline.org

Area Agency on Aging of Tarrant County
(Provides resources and referrals for older adults, disabled persons
and caregivers)
1500 N. Main Street, Suite 200
Fort Worth, TX 76164
(817) 258-8081
www.unitedwaytarrant.org/aaa/

Disability Rights, Texas
(Mission is to protect the rights of, and advocate for, persons with
disabilities)
North Texas Regional Office
1420 West Mockingbird Lane, Suite 450
Dallas, TX 75247-4932
1-(214) 630-0916 (Voice)
1-(866) 362-2851 (Video Phone)
www.disabilityrightstx.org

Aging and Disability Resource Center (ADRC)
(Provides resources and referrals for older adults,
disabled persons and caregivers)
1300 Circle Drive
Fort Worth, TX 76119
1-888-730-2372
www.tarrantcountyadrc.org

Mental Health/Intellectual and Developmental Disability
of Tarrant County
(MHMR of Tarrant County)
(Provides services to persons with mental illness and
persons with an intellectual or developmental disability)
3840 Hulen Street, North Tower
Fort Worth, TX 76107
(817) 569-4300
www.mhmrtc.org

Texas Judicial Branch Certification Commission
Oversee certification of professional guardians in Texas
205 W. 14th Street, Suite 600
Austin, TX 78701
(512) 475-4368
www.txcourts.gov/jbcc/guardianship-certification.aspx