

Designations of Guardians

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- Tex. Est. Code ch. 1104 covers guardianships for minors, incapacitated adults, and others.
- Parents of minors and incapacitated adults can designate guardians in their wills, but the designation can also be in a separate writing.
- Ch. 1104 sets out two forms for designating guardians:
 - Declaration of Guardian in the Event of Later Incapacity or Need of Guardian
 - Declaration of Appointment of Guardian for My Children in the Event of My Death or Incapacity

Guardian of Person vs. Guardian of Estate

- Guardian of the Person: has the rights to physical possession of the ward and to establish the ward's legal domicile, and the duties to provide care, supervision, protection, clothing, food, medical care, and shelter. Has the power to consent to medical and related treatment and other similar powers.
- Guardian of the Estate: entitled to possess and manage the ward's property, collect debts and claims, enforce obligations in favor of ward, etc.

Choice of Guardians

- Declarant should consider the trustworthiness and competence of the individuals named in the designation. Consider that the persons designated as guardians of the persons may not be best-suited as guardians of the estate, and vice-versa.

Disqualification of Person from Serving as Guardian for Declarant

- A declarant may disqualify a person from serving as the declarant's guardian. The court may not under any circumstances appoint the disqualified person as guardian.
- This option is not available when designating a guardian for children.

Joint Guardians

- Only one person may be appointed as guardian of the person or as guardian of the estate, but one person may be appointed as guardian of the person and another as guardian of the estate, if it is in the best interest of the ward.
- Exceptions:
 - A “husband and wife”
 - Joint managing conservators
 - Co-guardians appointed in other jurisdictions
 - Both parents of an incapacitated adult who has not been the subject of a SAPCR, or has been the subject of a SAPCR and both of the incapacitated person’s parents were named as JMCs in the suit but are no longer serving in that capacity.

Effect of Divorce

- If the declarant names the declarant's spouse to serve as guardian, and the declarant is subsequently divorced from that spouse before a guardian is appointed, the provision of the declaration designating the spouse has no effect.

Execution Requirements

- May be holographic.
- A typed declaration must signed by the declarant and attested to in the declarant's presence by two witnesses.
- May be self-proved with the help of a notary.
- A declaration of guardian for oneself that does not disqualify anyone from serving as guardian can be notarized.
- See also Bill Pargaman's video presentation called "A Guide to Executing Estate Planning Documents in Uncertain Times."

Free Access to the Texas Guardianship Manual Online

- The forms discussed in this presentation are available in the Texas Guardianship Manual Online.
- TexasBarBooks is providing all State Bar members free access to the Texas Guardianship Manual Online. The manual includes forms and instructions for creating guardianships, advance directives, end-stage planning, and other topics.
- To request access to these resources, email books@texasbar.com with your name, bar card number, and preferred email address. Complimentary access to the manual extends until May 31, 2020.