

THE NEW GUARDIANSHIP REQUIREMENTS: ALTERNATIVES TO GUARDIANSHIP AND SUPPORTS AND SERVICES

Richard LaVallo
Legal Director
Disability Rights Texas
rlavallo@drtx.org

1

Reforming Guardianship in Texas

The 84th Legislature passed four bills protecting the rights of persons with disabilities in the guardianship system:

- 1) HB 39 – Alternatives to Guardianship;
- 2) SB 1881 – Supported Decision-Making Agreement Act;
- 3) SB 1882 – Bill of Rights of Wards; and
- 4) HB 1438 (Section 10) – Court-Initiated Guardianships

[Note: All references are to the Estates Code and not the Bill provisions.]

2

Significant Changes

- For the first time, the Texas legislature mandated that probate courts consider **alternatives to guardianships and supports and services** before a guardianship is created.
- Texas became the first state in the nation to codify **supported decision-making** in statute as an alternative to guardianship.

3

ALTERNATIVES TO GUARDIANSHIP

4

Alternatives to Guardianship: Texas Estates Code

Alternatives to guardianship include:

- 1) Medical Power of Attorney;
- 2) Durable Power of Attorney;
- 3) Declaration for Mental Health Treatment;
- 4) Representative Payee;
- 5) Joint Bank Account;

5

Alternatives to Guardianship

- 6) Management Trust;
- 7) Special Needs Trust;
- 8) Designation of Guardian Before the Need Arises;
- 9) Alternate Forms of Decision-Making Based on Person-Centered Planning; and
- 10) Supported Decision Making Agreement.

Tex. Est. Code §§ 1002.0015 & 1357.001 et seq.

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: The New Guardianship Requirements: Alternatives to Guardianship and Supports and Services

Also available as part of the eCourse

[2016 Guardianship Bundle for Attorneys Ad Litem](#)

First appeared as part of the conference materials for the
18th Annual Estate Planning, Guardianship and Elder Law Conference session
"Alternatives to Guardianship"