

SUPPORTS & SERVICES – ALTERNATIVES TO GUARDIANSHIP

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GUARDIANSHIP REFORMS

The legislature mandated that a probate court must consider **alternatives to guardianship and supports and services** before a guardianship is created.

LEAST RESTRICTIVE ALTERNATIVES POLICIES

GUARDIANSHIP POLICY

Texas courts have the authority to appoint a guardian with **full or limited authority** over an incapacitated person. However, a guardianship should be only as restrictive:

- as indicated by the person's actual mental or physical limitations; and
- as necessary to promote and protect his or her well-being.

Tex. Est. Code § 1001.001(a).

THE CONTINUUM



“ . . . the court shall design the guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person, including by presuming that the incapacitated person retains capacity to make personal decisions regarding the person’s residence. ”

TEX. ESTATES CODE § 1001.001(b)

GUARDIANSHIP POLICY (CONT.)

- When an application for guardianship is filed, a court investigator must determine whether a less restrictive alternative to guardianship is appropriate.

Tex. Est. Code § 1054.151.

- **NEW:** All parties – the applicant, attorney ad litem, guardian ad litem, physicians, and the court have an **obligation to consider less restrictive alternatives and supports and services.**

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Title search: Alternatives to Guardianship and Supports and Services

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[2018 Estate Planning, Guardianship, and Elder Law eConference](#)

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