

# SUPPORTS & SERVICES – ALTERNATIVES TO GUARDIANSHIP

Richard LaVallo  
Legal Director  
Disability Rights Texas

## 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.**

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: Alternatives to Guardianship and Supports and Services

Also available as part of the eCourse

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

First appeared as part of the conference materials for the 20<sup>th</sup> Annual Estate Planning, Guardianship and Elder Law Conference session "Alternatives to Guardianship and Supports and Services"