

# Settlement of Guardianship Disputes:

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## LEGAL BASIS FOR SETTLEMENT AGREEMENTS

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## ***Legal Basis Guardianship Disputes***

- **Contract law:**
  - Intent to be bound;
  - Essential terms must be defined with sufficient detail; and
  - What is considered “essential” is on case-by-case basis.
- **Rule 11:**
  - Pending lawsuit;
  - In writing or made in open court; and
  - Can be one document or series of documents.
- **Civil Practice & Remedies Code Section 154.071.**
- **Texas Estates Code Sections 1055.151 and 1055.152**

## ***Basis of Settlement Agreement: Generally***

- **Contract Law:**
  - Framed by intent of parties, offer and acceptance;
  - Requires essential terms; and
  - Statute of Frauds.
- **TRCP Rule 11:**
  - Pending lawsuit;
  - Writing signed, filed in record or made in open court and entered into record;
  - Writing can be based on series of documents.
- **Texas Civil Practice and Remedies Code Section 154.071:**
  - Written settlement agreement reached in mediation;
  - Enforceable in same manner as any other written contract.

## ***Section 1055.151: Mediation of Contested Guardianship Proceedings***

- Mediation of guardianship disputes by agreement or court's own motion.
- Incapacity may be mediated but applicant for guardianship must still prove proposed ward is "an incapacitated person" in accordance with requirements of Chapter 1101.
- All parties shall evaluate during mediation:
  - Alternatives to guardianship; and
  - Supports and services available to proposed ward, including those that would be feasible to avoid guardianship.
- Mediation costs paid by parties unless otherwise ordered by court.
- If parties are unable to pay mediation costs, court may refer to local ADR center providing services for resolution of disputes established under CPRC Section 152.002.

## ***Section 1002.015: Defines "Guardianship Proceedings"***

- Term "guardianship proceeding" means matter or proceeding related to guardianship or any other matter covered by Title 3, Guardianship and Related Proceedings, including:
  - Appointment of guardian of minor or other incapacitated person, including incapacitated adult for whom another court obtained continuing, exclusive jurisdiction in suit affecting parent-child relationship when person was child;
  - Application, petition, or motion regarding guardianship or substitute for guardianship;
  - Mental health action; and
  - Application, petition, or motion regarding trust created under Chapter 1301.

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