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Wills ~ Trusts ~ Estate Planning ~ Guardianship ~ Probate

***BASIC GUARDIANSHIP INFORMATION, DISABLED CHILD TURNING 18
UNCONTESTED CASES, COLLIN COUNTY, TEXAS***

Dear Prospective Client:

This document provides some basic information about the guardianship process for parents applying to become the guardian of a disabled child who will be turning 18 soon. I have included specific information regarding how the process works in Collin County because this is the only county where I work. The basic process is the same in other counties, but you should retain an attorney who is familiar with the process in the county where you live. I work only on uncontested guardianships, so if there is any chance someone will contest your appointment as guardian please retain a different attorney.

In most cases the parents of the child are the ones filing the Application. If the parents are married they may file a joint Application requesting they both be appointed the child's guardians. In all other cases only one person can be appointed guardian. Any person can file an Application to become the guardian of an incapacitated person but the information provided in this document is primarily for parents of a disabled child that is turning 18. The proposed guardian is the "Applicant" and the child is the "Proposed Ward".

If you have any questions after you have read through this document please do not hesitate to contact me at 972-836-9091 or email your questions to wandasmithlaw@gmail.com.

LESS RESTRICTIVE ALTERNATIVES TO FULL GUARDIANSHIP

The Applicant must thoroughly consider all less restrictive alternatives to guardianship prior to beginning an application. The Application must state the degree and nature of the alleged incapacity, the specific areas of protection and assistance requested, as well as the limitation or termination of rights requested to be included in the court's order of appointment.

The use of available "supports and services" that could work in conjunction with a limited guardianship may be more appropriate than a full guardianship. With a limited guardianship a high functioning disabled individual can retain some or all of the following basic rights as is appropriate for their situation: right to vote, drive, marry, choose where they want to live, maintain a bank account, etc.

Tex. Estates Code § 1101.001. Application For Appointment Of Guardian, sets out in part that the Applicant must state: (3.a) whether alternatives to guardianship and available supports and services to avoid guardianship were considered, and (3.b) whether any alternatives to guardianship and supports and services available to the proposed ward considered are feasible and would avoid the need for a guardianship.

You will learn more about alternatives to guardianship when you complete the guardianship course that is now required for all proposed guardians. For more information download **Information on Alternatives to Guardianship**, under the “Other Information and Forms” section of the Forms page on my website.

MEDICAL EVIDENCE REQUIRED

The Applicant must prove to the court that the proposed ward is an incapacitated person and that there are no less restrictive alternatives to a guardianship that are feasible. An incapacitated person is an adult who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for his or her own physical health, or manage his or her own financial affairs.

The proposed ward’s **physician** (an M.D. or D.O.) must complete and sign the Physician’s Certificate of Medical Examination (CME). The physician can be a **psychiatrist** who is an M.D.

The Court-approved CME form is available to download from the “Forms” page on my website. You should print out and provide the approved form to your child’s physician. Do not use a different form. The CME must be completed within 120 days of the date of the filing of the Application with the court. The Application cannot be filed earlier than six months before the child turns 18.

Alternately, a **psychologist** who is licensed by the Texas Department of Aging and Disability Services to perform the proper type of examination can provide a letter for the court. In Collin County, contact LifePath Systems’ Intellectual and Developmental Disabilities’ (IDD) Services at **972-727-9133** and ask to speak to an Intake Specialist. LifePath has more information and forms on their website at: <http://www.lifepathsystems.org/idd-how-do-i-get-started>. Do not use a psychologist who is not working for a state agency.

WHEN TO FILE

The earliest you can file an Application with the court is 180 days (about six months) before the child’s 18th birthday. Remember the CME must be dated within 120 days of the date the Application is filed so time these to occur within a couple of months of each other. It is best to have the CME first, so it can be used to more accurately draft the Application.

WHO CAN FILE

Married parents of a child can file an application asking that they be jointly appointed as the child’s guardians. Otherwise, only one person can be appointed. The proposed guardian does not need to be the child’s parent. It can be any person as long as they do not have an interest that is adverse to the child and who meets the other qualifications. This is explained in the Disqualifications section below.

DISQUALIFICATIONS OF APPLICANT

Adverse Interest

If any Applicant owes money to the proposed ward or vice versa, there may be an adverse interest that disqualifies the Applicant.

If there is a pending lawsuit concerning or affecting the Proposed Ward in which the Applicant has an adverse interest he or she may be disqualified.

Criminal Background Check

Effective June 1, 2018, all Applicants must undergo a criminal history background check. If the proposed ward has an estate of \$50,000 or less a Department of Public Safety (DPS) background check is run.

If the estate exceeds \$50,000 a digital fingerprint background check will be done.

If any Applicant has a criminal history involving crimes against persons (assault and battery), crimes involving dishonesty, fraud, misrepresentation or obstruction of justice, crimes involving tampering with government documents, crimes against property (theft or burglary), crimes involving drugs or alcohol, or crimes involving deliberate violence, the court may find the Applicant is not eligible to serve as a Guardian. If Adult or Child Protective Services has ever been to the home to investigate abuse or neglect the Applicant might not be eligible to be appointed Guardian.

If only one parent has a criminal history the other parent should be the only person on the Application.

COURT COSTS AND BOND

If the proposed ward's estate is less than \$2000 (just clothes and personal effects), the Collin County probate judge will usually waive court costs and attorney ad litem fees. If the child's estate is less than \$5000 the court typically allows the proposed guardian to post a personal surety bond (a promise to pay) instead of purchasing a corporate surety bond from an insurance company. Bond is usually about \$500 unless there are significant assets in the child's estate.

GUARDIAN OF THE PERSON AND GUARDIAN OF THE ESTATE

If the proposed ward has significant assets, the Applicant will need to apply to become both guardian of the person and guardian of the estate. In this case a corporate surety bond must be purchased from an insurance company equal to the value of the liquid assets of the child's estate (excludes real estate.) Purchase of a corporate surety bond requires a credit check and personal financial statement of the Applicant, so if your credit is poor be sure to get pre-qualified for the surety bond before starting the Application.

GUARDIANSHIP REGISTRATION WITH THE JBCC

Effective June 1, 2018, a person applying to become a guardian must register with the JBCC. The online registration system is available here: <http://www.txcourts.gov/jbcc/register-a-guardianship/>. Registration with the JBCC automatically triggers the criminal history background check.

GUARDIANSHIP TRAINING

After you have registered with the JBCC, complete the one hour guardianship online training and download your certificate of completion. The training course and more information is available here: <https://guardianship-txcourts.talentlms.com/catalog/info/id:144>. Include a copy of this certificate along with the CME and the completed Guardianship Intake Form from my website and email everything to me when you're ready to call for your appointment.

REQUIRED NOTICE TO FAMILY MEMBERS

Notice must be provided to all of the proposed ward's immediate family members. The intake form asks you to provide information about the Applicant and Applicant's spouse, any children born to

the proposed ward, the parents of the proposed ward and all of the proposed ward's full and half siblings (all full and half brothers and sisters). If all of the family members agree to the guardianship then each will be asked to sign a waiver of notice. If any family members cannot be found it may be necessary to post notice by publication. If there are family members who will object to the Applicant being named guardian, then this becomes a contested case which I do not handle.

ORDER OF THE PROCESS

First, do you qualify?

Before you contact my office, be sure you to review the following.

Review the items under criminal history that may disqualify you. If one parent has a criminal history but the other parent does not, then only one parent should file as Applicant.

Are all of the immediate family members in agreement that the Applicant is a suitable guardian? If some family members will contest the Applicant's appointment then you need to retain a different attorney as I only handle uncontested cases.

If applying to become guardian of the estate where the proposed ward has significant assets, first be sure you can qualify for the surety bond. Contact my office for additional information. If you have poor credit you might not qualify to be appointed guardian.

START THE PROCESS

Start the process when your child is about 17 ½. It takes some physicians several weeks to return a CME, so go ahead and download the court-approved form from my website and provide it to your child's physician or contact LifePath if you are going that route.

REGISTER WITH JBCC

The online registration system is available here: <http://www.txcourts.gov/jbcc/register-a-guardianship/>. Registration with the JBCC automatically triggers the criminal history background check.

COMPLETE THE GUARDIANSHIP TRAINING

Complete the one hour guardianship online training and download your certificate of completion. The training course and more information is available here: <https://guardianship-txcourts.talentlms.com/catalog/info/id:144>.

COMPLETE THE APPROPRIATE INTAKE FORM ON MY WEBSITE

Complete all parts of the appropriate Guardianship Intake Form and email it along with the completed CME and your certificate of training to my office.

REQUEST AN APPOINTMENT

Request an appointment. I prefer this meeting take place at the home of the Applicant and proposed ward. Evening and weekend appointments are available. There is no extra fee for me to travel to your home, or the facility where the proposed ward lives as long as it is in the southern half of Collin County. Some areas north of McKinney may incur a small travel fee.

During the consultation we'll review your documents and I will speak with the proposed ward as far as possible. At this time you'll be asked to sign an Engagement Letter and pay the retainer fee. Uncontested cases are charged at flat fee and these fees are posted on my website under "Practice Areas". We'll also obtain signatures of other immediate family members if they can be present at this meeting and are available to sign the Waiver of Notice.

DRAFTING AND FILING OF APPLICATION

Usually I can complete the drafting and filing of the Application with a week of receipt of your documents and payment. I will obtain Waivers of Notice from the immediately family members and file these with the court. If the child's estate has assets under \$2000 I will file an Affidavit of Inability to Pay with the court asking that court costs be waived and attorney ad litem fees be paid by the county.

APPOINTMENT OF ATTORNEY AD LITEM

The court will appoint an attorney ad litem to represent the best interests of the proposed ward. The attorney ad litem will meet with the proposed ward both with and without the Applicant present. As far as is possible the attorney ad litem will explain to the proposed ward what a guardianship means and review the **Bill of Rights for Persons Under Guardianship**. You can download a copy of the Bill of Rights from my website.

The attorney ad litem may visit at the ward's home depending on the circumstances. In many cases where it is clear from the CME that a guardianship will be necessary the attorney ad litem will be instructed to meet with the proposed ward 30 minutes before the hearing and no visit to the home is necessary. The fee for the Attorney ad litem is usually between \$450-\$600 unless an Affidavit of Inability to Pay Fees has been filed with the court. In some rare cases the court may send the court investigator to the home to interview the proposed ward and Applicant.

COURT HEARING

In Collin County, Guardianship hearings are typically scheduled on only one day per month although it is possible to get on the docket at some other times depending on the situation. The proposed ward is almost always required to appear in court. In some cases the ward's appearance can be waived in situations where the proposed ward is entirely uncommunicative, lives in a persistent vegetative state, is on life support, or would require ambulance transfer to appear. Otherwise you should plan for your child to appear in court.

The judge will review the application and I will ask you questions about the application. The attorney ad litem will present their findings and may also ask you and your child some questions. Sometimes the judge will ask you or the proposed ward questions. I will review these questions with you prior to the hearing. An uncontested hearing usually takes about 10 minutes.

AFTER APPOINTMENT

After appointment the Guardian must file an annual report with the court until the guardianship terminates. See information regarding the annual report under the Forms section of my website.