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GUARDIANSHIP

In general, persons with mental retardation, autism, brain injuries, or a combination of these disabilities with other mental disorders need a guardian. Families with special needs children are often confused or uncertain as to what guardianship is and why they have to go through the stress and financial strain of a legal proceeding. Guardianship gives an adult the legal authority to care for a child after the age of emancipation. In situations where consent is required, the guardian, by Court Order, is the decision maker for the person with disabilities. Following are some basics about guardianship:

1. Persons over the age of 18 with mental impairments who are unable to manage their own affairs, care for, or protect themselves, need a guardian.
2. Guardianship is a legal proceeding. Each state has its own guardianship laws. In the State of Texas, guardianship matters are governed by the Texas Estates Code and are conducted in Probate Court. The person applying for guardianship must go to court and ask a judge to adjudicate incapacity and to appoint a guardian. The application for guardianship must be substantiated by a capacity assessment from a medical doctor licensed in the State of Texas. The ward, or person under guardianship, is put in the legal status of a minor child. The guardian must file an annual report with the Court on the location, status and well-being of the ward.
3. The *guardian of the person* has the legal authority to decide where the ward lives, consent to medical and dental treatment, be the representative payee of governmental benefits, and advocate on behalf of ward. One may serve as guardian of the person only or as guardian of the person and estate, if the ward has property to manage.
4. The *guardian of the estate* must be bonded, usually by an insurance policy, to protect the ward's assets. The guardian of the estate manages the ward's money under supervision of the court; and must obtain the court's permission for expenditures and must provide receipts for any expenditures to the Court. The guardian of the estate also has authority to bring a lawsuit on behalf of the ward. One may serve as guardian of the estate only or as guardian of the person and estate, depending on the needs of the ward.
5. Guardianship is transferable from some states to others. The specific state requirements must be met upon transfer. Within the State of Texas, guardianships are transferrable from county to county.
6. There can be co-guardians under certain circumstances.
7. You may provide for your child to have a successor guardian.
8. Guardianship has full legal authority while a power of attorney may not be binding.
9. Costs vary depending on the filing fees of ward's county of residence and the attorney's fees.
10. Consult with a lawyer who is very familiar with this special area of the law and compare fees.