



LEGAL HOTLINE FOR TEXANS

815 Brazos, Suite 1100, Austin, Texas 78701

(800) 622-2520 or (512) 477-3950

Pension Counseling (888) 343-4414

DESIGNATION OF GUARDIAN IN ADVANCE OF NEED

THIS PUBLICATION IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY.

The pamphlets of the Legal Hotline for Texans are general in nature and should not be relied on as advice for your particular circumstances. For advice that is specific to your particular circumstances, you should consult a lawyer.

The Legal Hotline for Texans (LHT) is a telephone hotline providing free legal advice and consultation and other free legal services to Texans Age 60 and Older or Eligible for Medicare; Crime Victims Age 60 and Older and their Family Members and Authorized Claimants; and Pension and Retirement Plan Employees, Participants and Beneficiaries.

Eligible Clients can consult with an attorney of the Legal Hotline for Texans free of charge by calling one of the phone numbers listed above. If clients would like to consult with an attorney in their communities, or if ongoing representation by an attorney is needed, the Legal Hotline for Texans may be able to make a referral.

Depending on individual circumstances and local availability, such a referral may be to an organization providing free attorneys to low income persons, or may be to an attorney on the Legal Hotline for Texans' reduced-fee panel, or may be to a statewide or local lawyer referral service.

The Legal Hotline for Texans is a project of the Texas Legal Services Center with support from the Texas Department of Aging, and Disability Services (DADS), the U.S. Centers for Medicare and Medicaid Services (CMS), the U.S. Administration on Aging (AoA) and the Texas Equal Access to Justice Foundation through the Texas Basic Civil Legal Services Program (BCLS) and the Texas Crime Victims Civil Legal Services Program (CVCLS)

© Copyright 2006, Texas Legal Services Center
All rights reserved.

DESIGNATION OF GUARDIAN IN ADVANCE

The Texas Probate Code provides that competent surviving parents of minor or disabled children may designate a guardian in the event of the parent's death or later disability. The Texas Probate Code also provides that a competent adult may designate a guardian in the event of the adult's later disability and for express disqualification of persons that the adult would not want to be appointed guardian. The Texas Probate Code provides suggested forms for advance designation.

DECLARATION OF APPOINTMENT OF GUARDIAN FOR CHILDREN IN THE EVENT OF DEATH OR INCAPACITY (Texas Probate Code §§ [676](#), [677](#), [677A](#), [677B](#))

Tex. Prob. Code
[§ 676\(d\)](#)

The competent surviving parent of a minor or an adult individual who is an incapacitated person may by will or written declaration appoint any eligible person to be guardian or alternate guardian of the person and/or estate of a minor or adult individual who is an incapacitated person after the parent's death or in the event of the parent's incapacity. If the parent dies or is found by the court to be incapacitated the court shall appoint the person designated in the will or declaration to serve as guardian in preference to those otherwise entitled to serve as guardian unless the court finds that the designated guardian is disqualified, is dead, refuses to serve, or would not serve the best interests of the prospective ward.

Tex. Prob. Code
[§ 676\(e\)](#)

Tex. Prob. Code
[§ 677\(c\)](#)

If the designated guardian does not qualify, is dead, refuses to serve, resigns, or dies after being appointed guardian, or is otherwise unavailable to serve as guardian, the court shall appoint the next eligible designated alternate guardian named in the declaration. If the guardian and all alternate guardians do not qualify, are dead, refuse to serve, or later die or resign, the court shall appoint another person to serve as otherwise provided by the Texas Probate Code.

DESIGNATION OF GUARDIAN BEFORE NEED ARISES BY COMPETENT ADULT (Texas Probate Code §§ [679](#), [679A](#))

Tex. Prob. Code
[§ 679\(f\)](#)

A competent adult may designate by a written declaration persons to serve as guardian of the person and/or estate of the competent adult if the competent adult becomes incapacitated. In addition, a competent adult may expressly disqualify by the written declaration persons to serve as guardian of the person and/or estate of the competent adult. Unless the court finds that the person designated in the declaration to serve as guardian is disqualified or would not serve the best interests of the ward, the court shall appoint the person as guardian in preference to those otherwise entitled to serve as guardian.

If the designated guardian does not qualify, is dead, refuses to serve, resigns, or dies after being appointed guardian, or is otherwise unavailable to serve as guardian, the court shall appoint the next eligible designated alternate guardian named in the

declaration. If the guardian and all alternate guardians do not qualify, are dead, refuse to serve, or later die or resign, the court shall appoint another person to serve as otherwise provided by the Texas Probate Code.

Tex. Prob. Code
[§ 679\(h\)](#)

If a declarant designates the declarant's spouse to serve as guardian, and the declarant is subsequently divorced from that spouse before a guardian is appointed, the provision of the declaration designating the spouse has no effect.

Tex. Prob. Code
[§ 485](#)

Since appointment of a guardian of the estate revokes a durable power of attorney it is recommended that a designation of guardian before need be executed in connection with the durable power of attorney.

FORM OF WRITTEN DECLARATIONS OF PARENTS AND COMPETENT ADULTS

Tex. Prob. Code
[§ 679\(a\)\(1-2\)](#)

Written declarations of competent surviving parents and competent adults must be signed by the declarant and be written wholly in the handwriting of the declarant or attested to in the presence of the declarant by at least two credible witnesses 14 years of age or older who are not named as guardian or alternate guardian in the declaration.

If a declaration is self-proved, the court may admit the declaration into evidence without the testimony of witnesses attesting to the competency of the declarant and the execution of the declaration. Additional proof of the execution of the declaration with the formalities and solemnities and under the circumstances required to make it a valid declaration is not necessary.

A handwritten or attested declaration that is not self-proved may be proved in the same manner a will written wholly in the handwriting of the testator is proved under Texas Probate Code § 84 [Proof of Written Will Produced in Court].

Tex. Prob. Code
[§ 679\(g\)](#)

The declarant may revoke a declaration in any manner provided for the revocation of a will under Texas Probate Code § 63 [Revocation of Wills], including the subsequent re-execution of the declaration in the manner required for the original declaration.

A declaration and affidavit may be in any form adequate to clearly indicate the declarant's intention to designate a guardian for the declarant or the declarant's child.

A properly executed and witnessed self-proving declaration and affidavit, are prima facie evidence that the declarant was competent at the time the declarant executed the declaration and that the guardian named in the declaration would serve the best interests of the ward.

The declaration and any self-proving affidavit may be filed with the court at any time after the application for appointment of a guardian is filed and before a guardian is appointed.

ATTESTED DECLARATIONS

Tex. Prob. Code
[§ 679\(c\)](#)

A declaration that is not written wholly in the handwriting of the declarant may be signed by another person for the declarant under the direction of and in the presence of the declarant. An attested declaration may have attached a self-proving affidavit signed by the declarant and the witnesses attesting to the competence of the declarant and the execution of the declaration.

A suggested statutory form for a written declaration of a competent adult is contained in Texas Probate Code § 679. A suggested statutory form for a written declaration of a competent parent is contained in Texas Probate Code § 677A. A copy of both forms are reproduced below. It is recommended that the suggested statutory forms be used.

HANDWRITTEN DECLARATIONS

Tex. Prob. Code
[§ 677A](#)

At any time during the declarant's lifetime, a handwritten declaration may be made self-proved in the same form and manner a will written wholly in the handwriting of a testator is made self-proved under Texas Probate Code § 60 [Exception Pertaining to Holographic Wills].

STATUTORY FORMS

DECLARATION OF APPOINTMENT OF GUARDIAN FOR MY CHILDREN IN THE EVENT OF MY DEATH OR INCAPACITY

I, _____, make this Declaration to appoint as guardian for my child or children, listed as follows, in the event of my death or incapacity:

(add blanks as appropriate)

I designate _____ to serve as guardian of the person of my (child or children), _____ as first alternate guardian of the person of my (child or children), _____ as second alternate guardian of the person of my (child or children), and _____ as third alternate guardian of the person of my (child or children).

I direct that the guardian of the person of my (child or children) serve (with or without) bond.

(If applicable) I designate _____ to serve as guardian of the estate of my (child or children), _____ as first alternate guardian of the estate of my (child or children), _____ as second alternate guardian of the estate of my (child or children), and _____ as third alternate guardian of the estate of my (child or children).

If any guardian or alternate guardian dies, does not qualify, or resigns, the next named alternate guardian becomes guardian of my (child or children).

Signed this _____ day of _____, 20____.

Declarant

Witness

Witness

SELF-PROVING AFFIDAVIT

Before me, the undersigned authority, on this date personally appeared the declarant, and _____ and _____ as witnesses, and all being duly sworn, the declarant said that the above instrument was his or her Declaration of Appointment of Guardian for the Declarant's Children in the Event of Declarant's Death or Incapacity and that the declarant had made and executed it for the purposes expressed in the declaration. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the declaration as witnesses, and that the declarant appeared to them to be of sound mind.

Declarant

Affiant

Affiant

Subscribed and sworn to before me by the above named declarant and affiants on this ____ day of _____, 20____.

Notary Public in and for the State of Texas

My Commission expires:

**DECLARATION OF GUARDIAN IN THE EVENT OF LATER INCAPACITY
OR NEED OF GUARDIAN**

I, _____, make this Declaration of Guardian, to operate if the need for a guardian for me later arises.

1. I designate _____ to serve as guardian of my person, _____ as first alternate guardian of my person, _____ as second alternate guardian of my person, and _____ as third alternate guardian of my person.

2. I designate _____ to serve as guardian of my estate, _____ as first alternate guardian of my estate, _____ as second alternate guardian of my estate, and _____ as third alternate guardian of my estate.

3. If any guardian or alternate guardian dies, does not qualify, or resigns, the next named alternate guardian becomes my guardian.

4. I expressly disqualify the following persons from serving as guardian of my person: _____, _____, and _____.

5. I expressly disqualify the following persons from serving as guardian of my estate: _____, _____, and _____.

Signed this ___ day of _____, 20__.

Declarant

Witness

Witness

SELF-PROVING AFFIDAVIT

Before me, the undersigned authority, on this date personally appeared the declarant, and _____ and _____ as witnesses, and all being duly sworn, the declarant said that the above instrument was his or her Declaration of Guardian and that the declarant had made and executed it for the purposes expressed in the declaration. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the declaration as witnesses, and that the declarant appeared to them to be of sound mind.

Declarant

Affiant

Affiant

Subscribed and sworn to before me by the above named declarant and affiants on this
____ day of _____, 20__.

Notary Public in and for
the State of Texas

My Commission expires:_____