

GUARDIANSHIPS ORDERS

Estates Code 1101.101 – Findings & Proof Required

Clear and Convincing Evidence

- Proposed ward is an incapacitated person;
- It is in his/her best interest for the Court to appoint a guardian;
- Proposed ward's rights or property will be protected by the appointment of a guardian;
- Alternatives to guardianship have been considered and determined not feasible; and
- Supports and services available have been considered and determined not feasible.

Preponderance of the Evidence

- Court has venue;
- Guardian is eligible to act as guardian and entitled to appointment
- If a minor, guardianship is not being created with the primary purpose of establishing residency for school; and
- The proposed ward is:
 - Totally without capacity to care for himself or manage his property, or
 - Lacks the capacity to do some, but not all of the tasks necessary to care for himself or manage his property (guardian with limited authority).
 - Must specifically state whether the ward lacks capacity or lacks sufficient capacity with supports and services, to make decisions regarding residence, voting, operating a motor vehicle, and marriage.

General Order Requirements – EST 1101.153

- Name of guardian;
- Name of ward;
- Whether it is guardian of the person or estate, or both;
- Amount of any bond;
- Whether an appraisal is necessary (estate);
- That the clerk will issue letters.
- If improvement in ward's condition is possible and a date of less than a year for improvement is in Certificate of Medical Examination (CME), then order must include date for guardian to submit updated CME.
- Powers and duties cannot conflict with any other guardian.
- May specify when the ward can file petition for adjudication without special leave.

Guardian with Full Authority – EST 1101.151

- That guardian has full authority over ward;
- The amount of funds the guardian can spend on education and maintenance (if necessary);
- Whether the incapacity is from a mental condition;
- That the person has no capacity to drive, decide residence, and vote; and
- The rights of the guardian of the person 1151.051(c)(1).
- Peace Officer Notice

Guardian with Limited Authority – EST 1101.152

- Specific powers, limitations, or duties of guardian
- Specific rights and powers retained
 - With and without necessary supports and services
- The amount of funds the guardian can spend on education and maintenance (if necessary);
- Whether the incapacity is from a mental condition; and
- Whether the person retains the right to drive, vote, or decide residence.
- Peace Officer Notice