

# Re-Thinking Guardianship

The issue of guardianship is stressful on any relationship between the person with a disability and the current or potential guardian.

More than one parent or family member has considered removing all rights and privileges from their teenage child who is just about to turn majority age! But to do so would not allow the “rite of passage” that everyone goes through.

For older adults with disabilities, the issue is one of continuing debate. Decisions and responsibilities about issues like dating, where to live, ownership and managing money become even more difficult as parents/family members struggle with their fears.

In response, many parents or family members may feel that they need ‘guardianship’ in order to assist their adult son/daughter/ brother/sister with a disability negotiate life and be safe. Guardianship is a legal process designed to protect vulnerable persons from abuse, neglect (including self-neglect) and exploitation. It’s important to understand guardianship—and its consequences—some of which may not be desirable for the individuals or families:

- In the legal system, guardianship removes rights and privileges from an incapacitated person (referred to as the “ward”).
- Obtaining guardianship involves the court system and, typically, attorney fees. This can create an unnecessary financial hardship on families.
- For many people, it is applying a legal solution to personal issues that can be handled through less intrusive means.

There are alternatives to guardianship that respect the person’s rights and privileges and define the needed supports for a person with a disability to be safe. Because guardianship takes away a person’s rights, the Texas courts will look for a less restrictive alternative before granting a guardianship. Texas laws also express a clear preference for partial guardianship for limited decision-making power rather than full guardianship over all possible life decisions.

The following alternatives can help individuals with disabilities and their advocates handle decision-making in a way that enables the person the dignity and freedom to develop and participate in the lives they want and choose:

- **Person Directed Planning:** The person-centered planning process is defined generally as a process of planning for and supporting an individual that honors the individual’s preferences, choices and abilities. The person-centered planning process assumes that all people have preferences, regardless of their level of disability. Through this process, the person’s preferences are determined by any method possible. In some cases, observations of the individual’s behavior by those closest to them are used to determine preferences. Such preferences are then honored as long as they are not harmful to the individual. This process of determining preferences and choices enhances the dignity and self-determination of individuals and is far more reliable than having a court-appointed single person to make all decisions with or without the input of the individual with a disability.
- **Money Management:** Volunteer money management programs offer a less restrictive alternative to guardianship for low-income elderly and adults with disabilities who are incapable of managing their checking accounts themselves and have no one else available or appropriate to assist them.
- **Power of Attorney:** A Power of Attorney (POA) is an instrument executed by an adult who has capacity authorizing another person to act as his or her agent. The power to the agent may be either specific or general.
- **Durable Power of Attorney:** If specifically stated in the document, the POA becomes a durable power of attorney and does not terminate upon the disability or incapacity of the principal.
- **Durable Power of Attorney for Health Care:** The durable power of attorney for health care is an instrument executed by an adult with capacity giving another person the authority to make health care decisions for him or her.



(Over for more)

- **Social Security's Representative Payment Program:** Provides fiduciary assistance for Social Security beneficiaries who are incapable of managing or directing someone else to manage their Social Security or SSI payments. Generally, family or friends are asked to serve in this capacity. When friends and family are not able to serve as payee, SSA looks for qualified organizations to be a representative payee. For more information, see the Social Security Administration website: [www.ssa.gov/payee](http://www.ssa.gov/payee).
- **Trustee:** If a substantial amount of money comes into the individual's life, there are trust documents that can be drafted that can protect the governmental benefits and still use the funds to provide an enhanced life for the individual. A trustee or co-trustees can be designated to distribute the funds and see that the individual's needs and desires are met. Such a trust can specify that someone visit the person and assure that the individual is satisfied with his or her living situation and support systems. A knowledgeable attorney or the Arc of Texas can be consulted about trust documents. The Arc of Texas website has more information: [www.thearcoftexas.com](http://www.thearcoftexas.com).

The above methods are a few of the major alternatives to guardianship. In addition to these methods, there are many more alternatives to guardianship that can be devised to fit specific issues. For more information about guardianship, check out this website: [www.texasguardianship.org](http://www.texasguardianship.org).

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Imagine Enterprises, with assistance from Austin-based consultant Kaye Beneke, created the *The Boot Camp Toolkit* as part of the Self Determination for Texas Project, a grant funded by the Texas Council for Developmental Disabilities. For more information, contact Imagine Enterprises, 1402 Spring Cress Lane, Seabrook, TX 77586, 281-474-7887, [www.selfdetermined.org](http://www.selfdetermined.org).

