

Disability *Rights* TEXAS

Changing Your Guardianship Without a Lawyer:

A Guide to Asking for Restoration, Modification,
A Successor Guardian, and Removal in Texas

About Disability Rights Texas

Beginning in 1975, Congress created a national network of protection and advocacy organizations to help secure and advance the rights of people with disabilities. Disability Rights Texas is the federally mandated legal protection and advocacy agency for people with disabilities in Texas. Our mission is to help people with disabilities understand and exercise their rights under the law, ensuring their full and equal protection in society. Our lawyers and advocates fulfill this mission through individual advocacy, legal representation, policy work, and systems reform initiatives.

Statewide Intake Phone Line for New Callers:
9:00 a.m. to 4:00 pm, Monday through Friday
1 (800) 252-9108

Online Intake (available 24/7):
intake.dr.tx.org

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2222 West Braker Lane
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SECTION 1:

IMPORTANT TERMS TO KNOW

You will see the following words or phrases used commonly throughout this guide:

Attorney ad litem: An attorney ad litem is appointed by the court to represent you in a guardianship proceeding. The lawyer's job is to tell the court what you would like to happen with your guardianship. For example, if you are applying for restoration of rights, then your attorney ad litem needs to tell the court why your rights should be restored. He or she also needs to share information with the court that shows how your capacity has been restored.

Bill of Rights of Wards: The Texas Estates Code sets out the rights of persons who are under a guardianship. This law has 24 rights under state and federal laws that belong to you unless restricted by a court. These rights include:

- The right to have a copy of the guardianship order
- The right to have the contact information for the probate court
- The right to be notified when the court will consider if your guardianship should be continued, modified, or terminated

Evidence: Documents, stories, testimony, or other information that you present to the court.

Guardian: A person, program, or agency appointed by the court to make decisions for a person who may not be able to make decisions or care for themselves.

Guardian ad litem: A guardian ad litem is not a guardian. He or she is appointed by the court to look into your situation and report back to the court about your guardianship. The guardian ad litem tells the court what is in your best interest.

Guardianship: A legal process used to provide help for adults who are unable to make decisions or care for themselves. There are two types of guardianship – guardianship of the person and guardianship of the estate.

Guardianship proceeding: A meeting that takes place in court to address any requested changes to your guardianship.

Incapacitated: A person with a disability that affects how he or she makes decisions or understands information. Texas law defines “incapacitated person” as an adult who, because of physical or mental condition, is substantially unable to provide food, clothing, or shelter for themselves; care for their physical health; or manage their money.

Modification: When the court changes your guardianship to allow you to make some of your own decisions while your guardian can still make other decisions.

Removal: When the court relieves a guardian of their duties.

Restoration: When the court ends your guardianship and allows you to make all of your own decisions.

Successor Guardian: The new person or program that will serve as guardian, replacing your previous guardian.

Supported Decision-Making Agreement: A voluntary agreement where a trusted friend or family member of your choice helps you make decisions. These decisions include where you want to live, the services, supports, and medical care you want to receive, whom you want to live with, and where you want to work. With this agreement, you keep your right to make decisions about your life with the assistance of a supporter.

Supports and Services: Formal or informal assistance that helps you meet your needs for food, clothing, shelter, physical or mental health care, and money management. Also things that help you make decisions about your residence, voting, driving, and getting married. This could include support from a trusted friend or family member under a supported decision-making agreement, a community-based Medicaid waiver program, or case management services.

Ward or Person Under Guardianship: A person who has a guardian appointed by the court.

Witness: Someone who can speak to the court about your abilities in a guardianship proceeding. For example, a friend, family member, doctor, or service provider.

SECTION 2:

INTRODUCTION TO GUARDIANSHIP AND GUIDE OVERVIEW

Guardianship can be difficult to understand. It is better to find a lawyer to help you if you want to change your guardianship. Yet, certain changes to your guardianship do not need the help of a lawyer. This guide will provide general information about what you can do to change your guardianship without a lawyer. If you need specific legal advice about your case, you should consult a lawyer.

If you need help reading or understanding this guide, you have a right to ask your guardian or someone you trust to help you understand the information.

What is Guardianship?

Guardianship is a legal process used to help adults who are **incapacitated** manage their daily affairs and/or money. Incapacitated means that a judge has decided that you have a disability that affects your ability to make decisions or understand information.

An incapacitated person is called a **ward** or **person under guardianship**. A court appoints a guardian to make certain decisions for the ward or person under guardianship. The guardian can be a friend, family member or other person, a private guardianship program, or a public guardianship program run by a state agency.

There are two types of guardianships:

- 1) **Guardianship of the person** allows a guardian to make decisions related to the person's (ward's) life, such as medical decisions, living arrangements, and long-term care.
- 2) **Guardianship of the estate** allows a guardian to make decisions related to the person's (ward's) property, such as handling money, managing investments, and selling property.

A court can appoint a guardian of the person, guardian of the estate, or both.

Guardianships can be full or limited depending on the type of help the person requires.

- A **full guardianship** transfers all rights from the person (ward) to the guardian.
- A **limited guardianship** transfers only some of the person's (ward's) rights to the guardian.

A judge should order a guardianship that allows the person under guardianship to have the most independence. Also, if the person under guardianship has a disability that changes or improves, more or less help from a guardian may be needed.

What Information Does This Guide Contain?

This guide can help you if you are a person under guardianship and want to change your guardianship. There are several ways a court can change a guardianship:

- 1) If you want to make *all* of your own decisions and *not* have a guardian, you can ask the judge to return all of your rights to make decisions about your life. This is called **restoration**.
- 2) If you want to make *some* of your own decisions about your life, but still have a guardian to help with certain things, you can ask the judge to make changes to your guardianship. This is called **modification** or **partial restoration**.
- 3) If you want a *new* guardian, you can ask the judge to give you another guardian. This is called an **appointment of a successor guardian**. A new guardian may also be appointed if your guardian is **removed**.

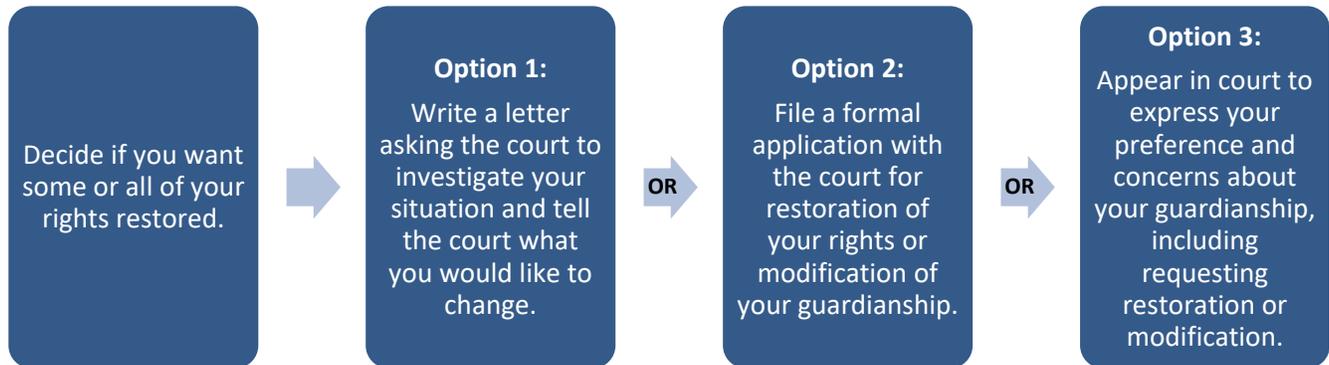
Each of these changes can only be made by a judge in a **hearing or guardianship proceeding**. The hearing will take place in the court that looks after your guardianship, which is usually a court in the county where you live. If you do not know which court looks after your guardianship, this guide will provide you with information about how you can find out.

This guide will provide you with information about:

- How to ask the court for restoration, modification, appointment of a successor guardian, and removal of your guardian
- Which court to ask
- What the hearing or guardianship proceeding will be like
- What you can do if your request is not granted

SECTION 3:

OVERVIEW OF THE RESTORATION AND MODIFICATION PROCESS



How Do I Request Restoration or Modification?

There are three ways to begin the process for restoration [giving back] of your rights or modification [changes to] of your guardianship.

OPTION 1: Ask the court to investigate whether you need a guardian. You can do this by writing a letter to the court. It is important that the letter comes from you. The letter should ask the court to investigate your guardianship. The letter should also tell the court what you would like changed. Finally, the letter should include why you think the guardianship should be changed. There is a sample letter on page 22 that you can use as a guide if you want all your rights returned to you so you can make decisions on your own. There is also a sample letter on page 23 that you can use as a guide if you want the court to change your guardianship by giving back some of your rights. The sample letters should be changed to fit your personal situation.

Using the sample letters is a good idea if you do not have the money to hire a lawyer or you do not have a doctor who will fill out a Certificate of Medical Examination. This certificate is a report from your doctor that states whether you need a guardian. More information on this certificate can be found on page 12.

OPTION 2: Instead of writing a letter to the court, you can file a formal application requesting restoration or modification. You can file the application or have a trusted person file a formal application for you. For more information on how to file an application with the court see page 8. A sample

application for restoration can be found on pages 26-28. A sample application for modification can be found on pages 29-31. To file an application with court, you may need help from a lawyer. You will also need to have a doctor who is willing to complete a Certificate of Medical Examination. For more information on this certificate, see page 12 and for a sample Certificate of Medical Examination Form see pages 32-35.

OPTION 3: Attend the annual hearing related to your guardianship. Each year, the court is required to review your guardianship. The court determines whether your guardianship needs to be continued, changed, or terminated [ended]. You have the right to be informed when the court is going to consider your guardianship. Your guardian should provide you with information about the annual hearing or you can ask the court to tell you when it will consider your guardianship. If you want your rights restored or your guardianship modified, you should ask the court to allow you to attend court to make this request. There is a sample letter on page 24 that you can use as a guide if you want to attend the hearing when the court reviews your guardianship.

Can a Person Under Guardianship Request Restoration or Modification?

With two exceptions, a person under guardianship can request restoration or modification of their guardianship at any time.

- 1) If you asked the court for restoration or modification of your guardianship and the court said no during a hearing, you have to wait one year before you can ask for restoration or modification again. If you wait less than a year before asking the court for a restoration or modification, you must show that there is a good reason why the changes need to be made sooner.
- 2) If your guardianship was created less than a year ago, you will need to wait for one year to ask the court to make the changes. You do not have to wait a year if you have good reasons for asking to make changes to your guardianship sooner.

Where Do I File the Request for Restoration or Modification?

You need to file either the letter or the application with the court that created or currently monitors your guardianship. This is usually the court in the county where you live, unless your case has been changed to another court because you moved. There are instructions on finding the proper court on pages 10-11.

OPTION 1: If I want to ask the court to investigate a request for restoration or modification, what should I include in the letter?

Although it is not required, it is helpful if you include a copy of a Certificate of Medical Examination with your letter to the court. This is explained in more detail on page 12.

It is also helpful to include any other information you have that would help the court decide to restore your rights and allow you to make your own decisions. This includes the right to decide where you want to live, with or without supports and services. Think of this as your chance to show the judge how you have changed since your guardian was appointed. This information could, for example, tell the court about the supports and services that will help you make decisions about your life. This information could include paid and unpaid help you receive from trusted family or friends when making decisions about everyday issues.

Examples of everyday issues include money management, cooking, hygiene, health care, safety, and relationships. You could also show that you are involved in the community, have learned important skills, or have gained more independence since your guardianship was put in place. This could include school documents showing that you have taken a class that teaches you how to manage money, proof of work, or volunteer work. You are not required to include these documents with your letter. However, you should have these documents available to provide the court investigator.

What Happens After I Send an Investigation Letter to the Court?

The court must assign you a court investigator or a guardian ad litem, and the court must send you a letter with the contact information for the investigator or guardian ad litem. A guardian ad litem is not a guardian. A guardian ad litem is a lawyer or other person who helps the court by submitting a report about what should happen with your guardianship. You have a right to a copy of the report. More information about guardian ad litem is on pages 13-14.

Based on the report, the court may appoint a person called an attorney ad litem who acts as your advocate. More information on attorneys ad litem is on pages 13-14.

Anyone you trust can help you with this process. This includes a friend, family member, lawyer, guardian or community advocate. As discussed below, you also have the right to hire a lawyer.

OPTION 2: If I want to file an application for restoration or modification, what is required?

The application must be witnessed and notarized by you. The application must include the following information:

- Your name and address, gender, date of birth and address
- Your guardian's name and address
- The nature and a description of your guardianship
- The specific areas of protection and help you need and any current limitations on your rights
- Whether you are seeking full restoration or modification of your guardianship;
- If you want to modify your guardianship, the nature and degree of your incapacity, and what you want modified;
- The approximate value of your property
- If you are 60 or older, the names and addresses of your spouse, siblings and children or next of kin if you do not have a spouse, siblings, or children.

A sample application for restoration is on pages 26-28 and one for modification is on pages 29-31.

You will need a certificate from your doctor, called a Certificate of Medical Examination. The certificate needs to be no older than 120 days. The 120 days needs to fall between when you filed the application or the date of your hearing. The Certificate of Medical Examination must explain if you can care for yourself or have supports and services to help you. It must explain how you can:

- Provide food, clothing and shelter for yourself
- Care for your physical and mental health
- Manage your money

See page 12 for more information on these certificates.

Do I Have the Right to Hire my Own Lawyer?

You have the right to hire a lawyer. The lawyer will represent your interests when trying to make changes to your guardianship. The lawyer can also help you move from guardianship to a supported decision-making agreement. A supported decision-making agreement lets you to choose a person to support you in making decisions about your life. The lawyer must have a certificate that allows them to represent people in guardianship cases.

What Happens After the Application is Filed?

After the application gets filed, the court will set a hearing. The applicant must present information to support their request. The court will only use information about your mental or physical abilities at the time of the hearing. The applicant must show the court that they need restoration or modification of their guardianship.

The court will consider the information provided, make a decision, and issue a ruling. More information on the hearing and what happens after the judge issues a ruling is on pages 13-15.

SECTION 4:

IDENTIFYING THE PROPER COURT TO SUBMIT YOUR REQUEST

It is important to send your request to change your guardianship to the court that monitors your guardianship case. Your guardianship was most likely created in the county in which you live. That is not always the case though, especially if you have moved. Old copies of your guardianship papers should include the location of the court.

Under Texas law, you have a right to have a copy of your guardianship paperwork. If you do not have these papers, ask your guardian or call the court that handles guardianships in the county where you live.

Some courts allow you to mail or fax your written request to change your guardianship. Other courts may need you give it to the court in person. To find out the right process for your court, you should call and talk to a court clerk.

Do you Live in Any of the Counties Listed Below?

If the answer is yes, then your county has a **statutory probate court**. You find these courts in the bigger cities in the state. You can contact the court investigator's office in each statutory probate court to get answers to your questions. There are 18 statutory probate courts located in the 10 counties list below:

- Bexar County (Probate Courts 1 and 2)
- Collin County (Probate Court 1)
- Dallas County (Probate Courts 1, 2 and 3)
- Denton County (Probate Court 1)
- El Paso County (Probate Courts 1 and 2)
- Galveston County (Probate Court 1)
- Harris County (Probate Courts 1, 2, 3 and 4)
- Hidalgo County (Probate Court 1)
- Tarrant County (Probate Courts 1 and 2)
- Travis County (Probate Court 1)

You can find the contact information for a statutory probate court at this website link: <http://card.txcourts.gov/DirectorySearch.aspx> - the court type is the 'County Probate Court.'

If you do not live in one of the counties listed, you will need to contact your **county court**. You will need to ask them where you can send documents related to your guardianship. Use this website link to search the Texas Office of Court Administration's Judicial Directory: <http://www.txcourts.gov/judicial-directory.aspx>

The directory gets updated once a year. It includes an interactive map that is searchable by county that will give you the contact information for the county court where you live.

You can also locate your county court or the contact information for a statutory probate court by doing an **internet search** or **calling the operator at 211**.

- 1) To find the information by doing an **internet search**, you should search the name of your county along with the words "county court." For example, if you live in Kerr County, your search would look like "Kerr County court." If you live in Bexar County, which has more than one statutory probate court, your search would look like "Bexar County probate courts." Almost every county has a website, which will contain the court's contact information.
- 2) If you do not have access to a computer, you can **dial 211** to request contact information for your county court's office.

When you call the court, it is best to ask for the clerk or the court investigator. Let them know that you are a person under guardianship and want to apply to change your guardianship. If the person who answers the phone is not able to help you, then ask to speak with someone who can.

SECTION 5:

OBTAINING A CERTIFICATE OF MEDICAL EXAMINATION

What is a Certificate of Medical Examination?

A **Certificate of Medical Examination (CME)** is a form that only a licensed doctor can complete that looks at your need for a guardian. The form explains your current mental and physical conditions. It also includes the doctor's opinion of whether you can make all or some of your own decisions. Put another way, a CME helps the court determine if you need a full or partial guardianship or none at all.

If you are asking for restoration or modification, it is important that your doctor complete the CME. To be successful, the CME needs to show that you have the ability to make some or all of your decisions with or without supports and services. The court will review the CME to determine if you are able to handle certain tasks and make your own decisions.

Where Can I Get a CME Completed?

The CME must be completed by a doctor or psychiatrist who is licensed in the state of Texas. You should go to your current doctor or psychiatrist because they know you best. However, you may see any doctor that you want to see.

What Does a CME Need to Include?

Most courts use a form that has all the necessary information required by law. Ask the court which oversees your guardianship if they use a specific form. The form should:

- Describe what you are able to do
- Show how you think
- Describe how you communicate decisions about yourself
- Look at the medicines you take and how they affect you
- Give an opinion about how you are able to function on a day-to-day basis with or without supports and services

A sample CME can be found on pages 32-35.

SECTION 6:

APPEARING IN COURT: THE GUARDIANSHIP PROCEEDING

Who Can Be at the Guardianship Proceeding in Court?

- You
- Your guardian
- The judge
- Any witnesses (if allowed by the judge)
- Lawyers
- Court clerk and bailiff
- Other people in the courtroom waiting to speak with the judge

Witnesses are usually allowed in a restoration hearing. It is best to check with the court before you go to find out the specific rules. You will want to choose someone who knows you and can provide testimony about how you can make decisions for yourself. A good example of a witness would be a close friend, neighbor, or family member. Other examples are social workers, case managers, or treatment team members who know the supports and services you have.

The witness should be someone who has watched you become more independent and make more decisions for yourself (for example, making your own meals, finding a job, going out in the community, handling your money or learning a new skill, such as driving a car). You can also testify at the hearing or ask the doctor who completed your Certificate of Medical Examination to be a witness. An attorney ad litem or guardian ad litem will also be present if the court has appointed one, or both, for your case.

What is an Attorney ad Litem and Guardian ad Litem?

It is important to understand the difference between an **attorney ad litem** and a **guardian ad litem**. If you have asked the court to end your guardianship, the court must appoint an attorney ad litem to represent you. The attorney ad litem will represent you in your application to get your rights back. The lawyer's job is to advocate for your interests, so they must tell the court what you want to see happen.

For example, if you are looking to get your rights back, then the attorney ad litem must tell the court that is what you want. The lawyer needs to share information

with the court that shows how you can make your own decisions. This includes any supports and services or alternatives to guardianship that could allow you to have your rights restored. You may also hire your own lawyer rather than work with an attorney ad litem.

A guardian ad litem is a representative appointed by the court as well. The guardian ad litem's job is to tell that court what he or she feels would be in your best interests. This could mean that the guardian ad litem does not think your guardianship should end or be more limited. The guardian ad litem will present information to the court about your current mental capacity, what decisions you are able to make, and what would be best for you.

What Happens at the Hearing?

When your case is called, the judge will speak to you and the other people involved. Then the judge will make a decision about restoring your rights or changing your guardianship. You may be able to talk about your ability to make decisions. You may also have witnesses testify about how you have improved since you were given a guardian.

When is the Hearing?

The court will schedule your guardianship hearing. They will notify you of the time and date once they review your request. This notification is mailed to the address you provide to the court. It is important that all information you provide to the court is up-to-date. If your contact information changes, you should notify the court. You can also contact the court to find out when your hearing will be.

Where is the Hearing?

The hearing will take place in the court where your guardianship was created unless you have moved since the guardianship was created and your case was transferred to your where you now live. Instructions for finding the correct court are on pages 10-11.

What is the Judge Considering When He or She Makes a Decision on my Request for Restoration or Modification?

If you requested modification (meaning you want *some* of your rights back), the court will need to find that you have the ability to do some of the tasks below:

- Provide food, clothing, and shelter for yourself
- Manage your own money

The court may return some of your rights to allow you to care for yourself or manage your own money. The court will do this in a way that is consistent with your abilities. This could include restoring your right to vote, marry, operate a motor vehicle, or make personal decisions about where you live.

If you requested restoration (meaning you want *all* of your rights back), the court will need to find that you can do all the tasks needed to provide food, clothing, and shelter for yourself, and to manage your own money. The court will return all your rights if it feels you can do all these tasks with or without supports and services.

Even if you ask for full restoration, the judge may decide that your capacity has not improved enough. In that situation, the judge may change your guardianship. This means you will get some of your rights back, but your guardian will still make some decisions for you.

SECTION 7:

WHAT IF MY APPLICATION FOR RESTORATION OR MODIFICATION IS NOT GRANTED?

After the hearing, the judge may decide that you do not have the capacity to make your own decisions. If this happens, the judge will deny your request for restoration. This does not mean you should give up on getting more of your decision-making rights back. You can appeal the judge's denial of your request for restoration.

If you want to appeal, contact a lawyer immediately because you have only 30 days to file an appeal. If you decide to ask the court to look at your request at a later date, you will need to wait a year before going back to the court unless you can show good cause why you should return to court earlier.

Not having your rights returned may be disappointing. We encourage you over the next year to learn more skills to help show that you can make your own decisions. You will need to show that you can provide food, clothing, and housing for yourself, and manage your own money with or without supports and services.

You may want to try to get support from people you trust. Family and friends can help you make decisions. This can include decisions about money management, cooking, hygiene, health care, safety, and relationships. Certain services can help you such as community-based Medicaid waiver programs, case management services, and other services from your local mental health or intellectual and developmental disability authority.

Some examples of what you can do include:

- Identify trusted family and friends who can support you in making decisions
- Take a class that teaches money management
- Learn a new work skill, such as using computers
- Learn how to navigate the bus system so you can access the resources you need
- Pass a driving test
- Find a job
- Volunteer at a community organization

If the judge grants modification instead of restoration, meaning you get to make more decisions, but not all of them, you can also appeal this decision. If you want

to appeal, we recommend that you contact a lawyer immediately because you have only 30 days to file the appeal. You can also re-apply for restoration after a year. In the meantime, you will want to continue developing your skills.

SECTION 8:

ASKING FOR A NEW GUARDIAN

What is a Successor Guardian?

A **successor guardian** is a new guardian. You can ask for a successor guardian if your guardian dies, resigns, or you wish to have him or her replaced with a new guardian. When you apply for a successor guardian, you are asking the court to replace your current guardian. This request does not change the guardian's ability to make decisions for you. The successor guardian will have the same powers and rights as the previous guardian.

How Do I Get a New (Successor) Guardian Appointed?

If your guardian dies, quits, or is removed, the court may appoint a successor guardian. This will happen after an application has been filed and notice of the application is given as required by court rules. The court may also appoint a new guardian without an application if there is an immediate need to appoint someone. Even if a successor guardian is appointed, any person interested in your welfare can file an application to become your new guardian. The court is required to hold a hearing and may set aside the naming of the original successor guardian in favor of the interested party. This process may help you have the guardian of your preference.

What is Removal?

Removal is a process by which a guardian is relieved of his or her duties. A guardian can be removed with or without notice. When the guardian is removed, the court may find that you no longer need a guardian and restore your rights. Alternatively, the court may find that you continue to need a guardian and appoint a successor guardian.

How is a Guardian Removed?

You or another person interested in you can request that the court remove your guardian. You or someone you trust must write a letter to the court. The letter must explain that you no longer want your guardian to make decisions for you. It must also explain why and ask the court to investigate. A sample letter can be found on page 25. The court also has the authority to remove a guardian or you can file an application with the court asking them to remove your guardian. You can bring your complaints about your guardian to the attention of the court by requesting to attend the hearing.

Before the court will change your guardian and appoint a new one, the court will hold a hearing.

Why Might My Guardian Be Removed?

A guardian can be removed for several reasons. First, a guardian can be removed for failing to follow the law. Second, a guardian can be removed if he or she cannot be found by the court. A guardian can also be removed for abusing or neglecting you or stealing or mishandling your property. Your guardian may also be removed for violating your rights under the Bill of Rights of Wards, which is defined on page 1 in the “Important Terms to Know” section.

SECTION 9:

CONCLUSION

It is important to remember that you have a say about your guardianship. Your wishes and opinions about your guardianship should be considered by the court. The information in this guide can be used as a resource to help you with restoration, modification, appointment of a successor guardian, or removal. If you have questions about the process, contact the court. If you cannot get answers, then you can contact a lawyer or your local legal services provider.

You can also look at the laws governing guardianship for answers to your questions. Texas guardianship laws are found in the Texas Estates Code. If you, a friend, or a family member want to review the laws online, they can be found at www.statutes.legis.state.tx.us.

APPENDIX: SAMPLE LETTERS AND DOCUMENTS

The following section contains sample documents that can assist you in contacting the court. **Please remember these documents are guidelines only, and you should change them to fit your needs and particular circumstances.** You can also ask a friend or family member if you need help writing your letter. It is best if you sign the letter so the court knows you are sending it.

- The first letter is a request to the court to allow you to make all of your own decisions. The letter is called an “Informal Guardianship Restoration Request.” This means you are asking the court to find that you do not need a guardian.
- The second letter is a request to the court to allow you to make some of your own decisions. The letter is called an “Informal Guardianship Modification Request.” This means that you are asking the court to find that you still need a guardian. However, your guardian will have less control over you, and you will have more control over your life.
- The third letter is a request to receive notice of and attend the annual court proceeding to continue, modify, or terminate your guardianship so that you can express your preferences and concerns about your guardianship. This letter is called a “Request to Attend Hearing on Continuing, Modifying, or Terminating Guardianship.”
- The fourth letter is a request for a new guardian because your guardian is not doing a good job. The letter is called a “Guardian Removal Request.”
- We have also included two sample applications that may be filed instead of sending an informal letter to the court. The first is an example of an “Application for Restoration of Ward.” The second is an example of an “Application to Modify Guardianship.”
- The final document is a sample Certificate of Medical Examination.

Sample Letter #1:
Informal Guardianship Restoration Request

(Be sure to keep a copy for yourself)

EXAMPLE

[Date]

[Court's Address]

Re: Informal Guardianship Restoration Request for [your name]

Dear Honorable Judge [name]:

I am contacting the court for assistance with restoring my capacity. Currently [name of guardian] serves as guardian over my [person or estate or person and estate].

My letter contains three requests. First, I am asking the court to investigate whether it can assist me to remove the guardianship of my [person or estate or person and estate]. Second, I am requesting a hearing where I can present my evidence and appear before the court. Lastly, I request that the court appoint an attorney ad litem to represent me.

Included with my letter is evidence showing that I am no longer an incapacitated person and the guardianship should be removed. It demonstrates that I have the capacity to do all of the tasks necessary to provide food, clothing and shelter for myself, or to manage my own financial affairs. Based on this evidence, the court should remove my guardianship and restore my capacity. Due to the improvement of my capacity, all of my rights should be restored. I have included a Certificate of Medical Examination from my doctor that explains my current capacity in further detail.

Thank you for your assistance with this matter. Please contact me with any questions or concerns regarding my request. I look forward to the scheduling of my hearing.

Sincerely,

[Your name]

[Address]

[Phone number]

[Email address (if you have one)]

Sample Letter #2:
Informal Guardianship Modification Request

(Be sure to keep a copy for yourself)

EXAMPLE

[Date]

[Court's Address]

Re: Informal Guardianship Modification Request for [your name]

Dear Honorable Judge [name]:

I am contacting the court for assistance with modifying my guardianship. Currently [name of guardian] serves as guardians over my [person or estate or person and estate].

My letter contains three requests. First, I am asking the court to investigate whether it can assist me to modify the guardianship of my [person or estate or person and estate]. Second, I am requesting a hearing where I can present my evidence and appear before the court. Lastly, I request that the court appoint an attorney ad litem to represent me.

Included with my letter is evidence showing that I have the capacity to do some, but not all, of the tasks necessary to provide food, clothing and shelter for myself, or to manage my own financial affairs. Based on this evidence, the court should modify my guardianship and limit my guardian's powers. Due to the improvement of my capacity, some of my rights need to be restored to allow me to care for myself or to manage my own financial affairs in a way that is equal to my abilities. I have also attached a Certificate of Medical Examination from my doctor that explains my current capacity in further detail.

Thank you for your assistance with this matter. Please contact me with any questions or concerns regarding my request. I look forward to the scheduling of my hearing.

Sincerely,

[Your name]

[Address]

[Phone number]

[Email address (if you have one)]

Sample Letter #3:
Request to Attend Annual Hearing

(Be sure to keep a copy for yourself)

EXAMPLE

[Date]

[Court's Address]

Re: Request to Attend Hearing on Continuing, Modifying, or Terminating Guardianship for [your name]

Dear Honorable Judge [name]:

I am contacting the court to request notice regarding the court's annual review of whether to continue, modify, or terminate my guardianship. I am also requesting that I be allowed to attend this hearing to voice my preferences and concerns about my guardianship.

Thank you for your assistance with this matter. Please contact me with any questions or concerns regarding my request. I look forward to the scheduling of my hearing.

Sincerely,

[Your name]

[Address]

[Phone number]

[Email address (if you have one)]

Sample Letter #4:
Guardian Removal Request

(Be sure to keep a copy for yourself)

EXAMPLE

[Date]

[Court's Address]

Re: Guardianship Removal Request for [your name]

Dear Honorable Judge [name]:

I am contacting the court for assistance with removing my current guardian. Currently [name of guardian] serves as guardians over my [person or estate or person and estate].

I want my guardian removed because [explain why you want your guardian removed. This can include that she/he: has acted in a manner that would be considered abuse, neglect or exploitation; violated my rights under the Bill of Rights of Wards; failed to fulfill legal obligations; failed to follow the terms of the guardianship; or you would like someone different to be your guardian.]

I am requesting a hearing where I can present my evidence and appear before the court. Also, I request that the court appoint an attorney ad litem to represent me.

Thank you for your assistance with this matter. Please contact me with any questions or concerns regarding my request. I look forward to the scheduling of my hearing.

Sincerely,

[Your name]

[Address]

[Phone number]

[Email address (if you have one)]

SAMPLE APPLICATION FOR RESTORATION OF WARD

Specific information included in brackets [] is only an example. Information should be changed to reflect your personal information.

CAUSE NO. _____

GUARDIANSHIP OF § IN THE PROBATE COURT
[JANE CLIENT], § OF
AN INCAPACITATED PERSON § [TRAVIS COUNTY], TEXAS

APPLICATION FOR RESTORATION OF WARD

TO THE HONORABLE JUDGE OF THE COURT:

This Application for Restoration of Ward is filed pursuant to Section 1202.051 of the Texas Estates Code by [Jane Client] (Applicant), a person under guardianship. Applicant shows the following in support:

1. Applicant is an [adult female], born [May 19, 1980], who currently resides at [1234 River Drive, Austin, Texas 78745], where she may be served with citation. The ward’s estate is described in the inventory of the estate filed and approved by this Court.
2. On [May 19, 2008], the Court appointed [Jake Guardian] as guardian of the person and estate of Applicant, with the guardian having full rights and powers over the ward. The guardian resides at [9876 Oak Drive, Austin, Texas, 78704], where he may be served with citation.
3. Option 1: The relief being sought is complete restoration of the ward’s capacity because the ward is no longer incapacitated.

Option 2: The relief being sought is complete restoration of the ward's capacity because supports and services are available to assist the ward with meeting her need for food, clothing or shelter; caring for her physical or mental health; managing her financial affairs and making personal decisions regarding residence, voting, operating a motor vehicle, and marriage. These supports include [insert information about the supports you receive].

4. On [May 15, 2015], the guardian filed his most recent annual report of the location, condition and well-being of the ward which documents improvement in all areas related to capacity. A copy of this report is attached as Exhibit A.
5. As required by Section 1202.152 of the Estates Code, the ward's current level of capacity is further documented in a letter dated [May 10, 2015] from the ward's physician. A copy of the letter is attached as Exhibit B.
6. Since the guardian's appointment, the ward has regained the capacity to do all of the tasks necessary to care for herself and to manage her property. The ward's rights should therefore be completely restored and the guardianship closed.

WHEREFORE, PREMISES CONSIDERED, Applicant prays that:

1. the Court appoint an attorney ad litem to represent the ward in this proceeding;
2. notice and citation be issued as required by law;
3. the Court set a hearing on this application;
4. the Court enter an order restoring the ward to the extent that she has regained sufficient capacity to manage her own affairs;

5. if complete restoration is ordered, enter a finding that Jane Client is no longer incapacitated and order the settlement and closing of the guardianship; and
6. the Court order any such other relief to which the ward may be entitled.

Respectfully submitted,

[JANE CLIENT]
[1234 River Drive]
[Austin, Texas 78745]
[Phone: (512) 555-1234]

AFFIDAVIT

STATE OF TEXAS

COUNTY OF [TRAVIS]

Before me the undersigned Notary Public, on this day personally appeared [Jane Client] who swore under oath that she is the Applicant in the above entitled and numbered cause, that she read the above Application for Restoration of Ward, and that every statement contained in the Application is within her personal knowledge and is true and correct.

[Jane Client]

SIGNED under other before me on _____.

SAMPLE APPLICATION FOR MODIFICATION OF GUARDIANSHIP

Specific information included in brackets [] is only an example. Information should be changed to reflect your personal information.

CAUSE NO. _____

GUARDIANSHIP OF § IN THE PROBATE COURT
[JANE CLIENT], § OF
AN INCAPACITATED PERSON § [TRAVIS COUNTY], TEXAS

APPLICATION TO MODIFY GUARDIANSHIP

TO THE HONORABLE JUDGE OF THE COURT:

[Jane Client] (Applicant), a person under guardianship, files this Application to Modify Guardianship pursuant to Section 1202.051 of the Texas Estates Code and shows the following in support:

1. Applicant is an [adult female], born [May 19, 1980], who currently resides at [1234 River Drive, Austin, Texas 78745], where she may be served with citation.
2. On [May 19, 2008], the Court appointed [Jake Guardian] as guardian of the person and estate of the Applicant, with guardian having full rights and powers over the ward. The guardian resides at [9876 Oak Drive, Austin, Texas, 78704], where he may be served with citation.
3. Based on improvement in her condition, Applicant seeks the limitation of powers granted to or duties performed by the guardian because she is no

longer totally incapacitated. Specifically, she requests that her guardianship be modified to a guardianship of the person with limited authority over matters pertaining to voting in a public election and marriage and the continuation of the guardianship of the estate with full authority.

4. Attached to this Application, as Exhibit A, is a Physician's Certificate of Medical Examination dated [May 1, 2015] in which Applicant's long-time physician finds that her condition has improved since guardianship was sought and finds her "to have the capacity to personally initiate, handle, and make sound decisions concerning voting and marriage."

6. Applicant is no longer totally incapacitated and is no longer in need of a guardianship of the person with full authority. It is in her best interests, however, to continue to have a guardian of the person with limited authority and a guardian of the estate with full authority to protect the ward's person and finances.

WHEREFORE, PREMISES CONSIDERED, Applicant prays that:

1. the Court appoint an attorney ad litem to represent the ward in this proceeding;
2. notice and citation be issued as required by law;
3. the Court set a hearing on this application;
4. the Court modify the guardianship by restoring the ward's right to vote in a public election and marry, while retaining the guardian with limited authority over all other matters of the person and continuing the guardianship of the estate with full authority;

5. the Court issue new letters of guardianship that limit the guardian's powers with respect to voting and marriage; and
6. the Court order any such other relief to which the Applicant may be entitled.

Respectfully submitted,

[Jane Client]
[1234 River Road]
[Austin, Texas 78745]
[Phone: (512) 555-1234]

AFFIDAVIT

STATE OF TEXAS

COUNTY OF [TRAVIS]

Before me the undersigned Notary Public, on this day personally appeared [Jane Client] who swore under oath that she is the Applicant in the above entitled and numbered cause, that she read the above Application to Modify Guardianship, and that every statement contained in the Application is within her personal knowledge and is true and correct.

[Jane Client]

SIGNED under other before me on _____.

PHYSICIAN'S CERTIFICATE OF MEDICAL EXAMINATION

The purpose of this certificate is to enable the Court to determine whether the individual being evaluated is incapacitated according to the legal definition, and whether a guardian should be appointed to care for him or her or their guardianship should end or be less restrictive.

DEFINITION OF INCAPACITY

For purposes of this certificate, an **"Incapacitated Person"** is *"an adult who, because of a physical or mental condition, is substantially unable to:*

- (A) provide food, clothing or shelter for himself or herself;*
- (B) care for the individual's own physical health; or*
- (C) manage the individual's own financial affairs."* Texas Estates Code § 1002.017(2).

=====

GENERAL INFORMATION

Ward's Name _____
Date of Birth _____ Age _____ Gender M F
Current Location of Ward: _____

Physician's Name _____
Phone: (____) _____
Address: _____

- YES NO -- I am a physician currently licensed to practice in the State of Texas.
I have been the doctor for the Ward since _____
I last examined the Ward on _____, 20____ at:
a medical facility the Ward's residence
Other: _____
- YES NO -- The Ward is under my continuing treatment.
- YES NO -- Prior to the examination, I informed the Ward that communications with me would not be privileged.
- YES NO -- A mini-mental status exam was given. If "YES," please attach a copy.

=====

Based upon my last examination of the Ward, I provide the following information:

1. EVALUATION OF THE WARD'S PHYSICAL CONDITION

Physical diagnosis: _____
Conditions underlying diagnosis: _____
a. Prognosis: _____

b. Severity: Mild Moderate Severe

c. Treatment: _____

2. EVALUATION OF THE WARD'S MENTAL FUNCTION

Mental diagnosis: _____

Conditions underlying diagnosis: _____

a. Prognosis: _____

b. Severity: Mild Moderate Severe

c. Treatment: _____

YES NO -- A summary of Ward's medical history is attached (if reasonably available).

YES NO -- Would the Ward benefit from supports and services that would allow the individual to live in the least restrictive setting?

YES NO -- Does this mental diagnosis include dementia?

YES NO -- Would the Ward benefit from placement in a secured facility for the elderly or a secured nursing facility that specializes in the care and treatment of people with dementia?

YES NO -- Would the Ward benefit from medications appropriate to the care and treatment of dementia?

YES NO -- Does the Ward have the capacity to give informed consent to the administration of dementia medications?

3. DECISION-MAKING

Alertness, Attention and Deficits

Alertness: Alert Lethargic

Ward is oriented to the following (check all that apply):

Person Time Place Situation

In my opinion, the ability of the Ward to make or communicate responsible decisions concerning himself or herself is affected by the Ward's deficits and abilities as indicated below:

Deficit(s) (if any, check all that apply):

Short-term memory Long-term memory Immediate recall

YES NO -- Able to understand or communicate (verbally or otherwise)

YES NO -- Able to recognize familiar objects and persons

YES NO -- Able to solve problems

YES NO -- Able to reason logically

YES NO -- Able to administer to daily life activities with and without supports and services

YES NO -- The Ward's periods of impairment from the deficits indicated above (if any) vary substantially in frequency, severity, or duration

In my opinion, the Ward is able to make or communicate responsible decisions concerning himself or herself regarding the following:

A. Business and Managerial Matters; Financial Matters

- YES NO -- Contract and incur obligations; handle a bank account; apply for, consent to and receive governmental benefits and services; accept employment; hire employees; sue and defend on lawsuits; make gifts of real or personal property?
- YES NO -- If "YES," should amount deposited in any such bank account be limited?
- YES NO -- Execute a Durable Power of Lawyer?
- YES NO -- Execute a Health Care Power of Lawyer?

B. Personal Living Decisions

- YES NO -- Determine own residence?
- YES NO -- Safely operate a motor vehicle?
- YES NO -- Vote in a public election?
- YES NO -- Make decisions regarding marriage?

C. Medical Decision-Making

- YES NO -- Consent to medical, dental, psychological, and psychiatric treatment?
- YES NO -- Administer own medications on a daily basis?

D. Daily Life Activities

Administer to daily life activities (e.g., bathing, grooming, dressing, walking and toileting):

- YES, independently YES, with assistance NO, requires total care

4. DEVELOPMENTAL DISABILITY

- YES NO -- Does the Ward have developmental disability?
- If "YES," is the disability a result of the following? (Check all that apply)
- YES NO -- Intellectual Disability?
- YES NO -- Autism?
- YES NO -- Static Encephalopathy?
- YES NO -- Cerebral Palsy?
- YES NO -- Down Syndrome?
- YES NO -- Other? Please Explain _____

5. EVALUATION OF CAPACITY

YES NO -- Based on the information above, it is my opinion that the Ward is incapacitated according to the definition given at the top of page 1.

If "YES," please indicate the level of incapacity.

- PARTIAL TOTAL

If you answered "YES" to any of the questions regarding decision-making in Section 3 (previous page) and believe the Ward is **totally incapacitated**, please explain:

7. ABILITY TO ATTEND COURT HEARING

If a hearing on an application for the appointment of a guardian is scheduled in court:

YES NO -- The Ward would be able to attend, understand, and participate in the hearing.

YES NO -- Because of his or her incapacities, it would ***not*** be advisable for the Ward to appear at a Court hearing because the Ward would not be able to understand or participate in the hearing.

YES NO -- Does any current medication taken by the Ward affect the demeanor of the Ward or his or her ability to participate fully in a court proceeding?

8. ADDITIONAL INFORMATION OF BENEFIT TO THE COURT

If you have additional information concerning the Ward that you believe the Court should be aware of or other concerns about the Ward that are not included above, please explain:

Physician's Signature

Date

Physician's Name Printed