

## Naming a Guardian Before You Need One

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

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### Information Not Legal Advice

This pamphlet is for information only and is not a substitute for the advice of an attorney

## DESIGNATION OF GUARDIAN IN ADVANCE OF NEED

In Texas, competent surviving parents of minor or disabled children may designate a guardian in the event of the parent's death or disability. A competent adult may designate a guardian in the event of the adult's later disability and expressly disqualify persons that the adult would not want to be appointed guardian.

The Texas Probate Code provides suggested forms for advance designation. **If you have any questions about these forms, obtain competent legal advice.** If you are age 60 or older or are eligible for Medicare you may obtain assistance with a Designation of Guardian before Need Arises by a Competent Adult form from your local Area Agency on Aging.

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

The competent surviving parent of a minor child or disabled adult child may by will or written declaration appoint any eligible person to be guardian or alternate guardian of the child and/or estate after the parent's death or 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 unless the court finds that the designated guardian is disqualified, dead, refuses to serve, or would not serve the best interests of the prospective ward. If the designated guardian is unavailable to serve as guardian, the court shall appoint the alternate guardian named in the declaration. If both the guardian and alternate guardians do not qualify, are dead, refuse to serve, later die or resign, the court shall appoint another person to serve.

## STATUTORY FORM

### 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

Prob. Code  
(d)

\_\_\_\_\_  
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: \_\_\_\_\_

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

A competent adult may designate by 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 person, the court shall appoint the person 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 designated alternate guardian named in the declaration. If the guardian and all alternate guardians do not qualify, are dead, refuse to serve, later die or resign, the court shall appoint another person to serve.

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.

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.

## STATUTORY FORM

### 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.

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.

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.

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

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

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: \_\_\_\_\_

## **FORM OF WRITTEN DECLARATIONS OF PARENTS AND COMPETENT ADULTS**

Written declarations of competent surviving parents and competent adults are self-proved when signed by the declarant and 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.

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].

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 properly executed and witnessed self-proving declaration and affidavit serve as 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 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**

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.