10-19-16 County Judge's Article

GUARDIANSHIPS

A part of my duties as probate court judge for the county is to conduct guardianship hearings, and when appropriate to appoint a guardian of the person and also of the estate of an individual who has been determined to be incapacitated.

Before a person can be declared as incapacitated, they must be examined by a qualified physician within 120 days of the hearing, and a letter or certificate issued describing their condition that meets the requirements set out in the Texas Probate Code. An ad litem attorney must be appointed to represent the proposed ward's interests, interested parties including next of kin must be served notice of the hearing and given opportunity to protest the appointment, and so on. The ward can even request a jury trial to contest being declared incapacitated if they so desire.

In other words, it can get complicated although it usually does not. Some individuals are not ready to admit that they are not capable of caring for themselves any longer, even when they are found lost in the street as an example. Situations arise where family members no longer take care of their own or where an elderly person simply no longer any any family left. Fortunately most guardianships are fairly straightforward.

The reason guardianships are serious matters is because the proposed ward gives up almost all of their freedoms. They usually can no longer drive a car or hold a driver's license or go anywhere alone. They give up control of their assets, they can no longer vote, they give up choice of where they live, and on and on. This may not matter if they are mentally incapacitated, or have severe dementia or Alzheimer's disease. But this is not always the case.

One of the things we're always supposed to do is to consider other less severe alternatives such as power of attorney, assisted living or nursing home or other forms of care, or simply having families care for their own (the old fashioned way).

Once a guardianship is established, the guardian is required to file an annual accounting with the court for the judge's review and approval covering the ward's mental and physical condition, and an accounting for the status of the ward's assets (in the case of guardianship of the estate). There are some 75 active guardianships in Milam County.