

GUARDIANSHIPS FOR LEGALLY INCAPACITATED INDIVIDUALS

PLEASE READ BEFORE PROCEEDING.

This information is the only information court personnel can give you about this procedure. This information is not intended to be legal advice, but a brief explanation of the basic procedure that is required.

Probate court personnel cannot give legal advice about your particular situation or complete your forms for you. You are not required to have an attorney; however, the court cannot act as your attorney. If you do not understand these instructions or the process, you will need to obtain other assistance.

INTRODUCTION

There are two major types of guardianships over adults, one for incapacitated individuals and one for individuals with developmental disabilities. The information in this packet will only deal with the process for GUARDIANSHIP OF AN INCAPACITATED INDIVIDUAL. This refers to an adult who was once competent and able to make decisions on his/her own, but now is not able to do so. There is another law and different information that deals with guardianship for individuals with developmental disabilities (usually adults who have been developmentally disabled since childhood)

WHO MAY BE APPOINTED GUARDIAN

Any competent, suitable, willing adult designated by the respondent has first priority for being appointed guardian. If the respondent does not express a preference the priority is:

1. A person previously named in a durable power of attorney.
2. The spouse or someone nominated by the spouse in his/her will.
3. An adult child of the respondent.
4. A parent or someone nominated by a parent in his/her will.
5. A relative the respondent has lived with for 6 months before the petition was filed.
6. Someone nominated by the person who is caring for the respondent or paying for his/her care.
7. Any competent adult suitable and willing to serve.

The petitioner must locate and nominate a person to be the guardian.

WHAT IS NEEDED TO BE FILED

- Alternatives to Guardianship ([PC 666](#))
- Petition for Appointment of a Guardian ([PC 625](#))
- Petition for Appointment of Guardian Ad Litem/Attorney/Lawyer Guardian Ad Litem ([PC 641](#))
- Durable Power of Attorney and/or Patient Advocate (if applicable)
- Report of Physician ([PC 630](#))
- Adult guardianship questionnaire (form attached)
- \$150.00 filing fee

ALTERNATIVES TO GUARDIANSHIPS

Before filing the Petition for Appointment of Guardian the petitioner must receive and review the alternatives to guardianship. These alternatives are available on the form ([PC 666](#)). The petitioner must sign the form and submit it to the court when filing the Petition for Appointment of Guardian. An attorney for the petitioner may either submit the form signed by the petitioner or a proof of service on the petitioner regarding the ([PC 666](#)) form.

FILING THE PETITION

The process starts when someone interested in the welfare of a person who is thought to be in need of a guardian files a Petition for the Appointment of a Guardian ([PC 625](#)). The petition, when completed properly, signed and dated, is filed with the Probate Court in the county where the respondent is presently (resides or where he/she can be found) at the time of filing. The petition must contain specific facts and an example explaining why the petitioner believes the respondent is incapacitated and needs a guardian. It must also indicate whether the respondent is unable to make any decisions for him/herself and needs a full guardian, or whether the respondent can make some decisions and therefore only needs a limited guardian.

After the petition is filed, a hearing is scheduled before the Probate Judge. The hearing normally takes place 4-8 weeks later. The Court will serve all persons who are, by law and Supreme Court rule, entitled to notice of this proceeding. The petitioner must arrange for the respondent to be present at the hearing, if at all possible. The Guardian Ad Litem may waive the respondent's appearance at the hearing providing that the respondent is not in objection to the Petition for Appointment of Guardian. At the hearing, the petitioner must present testimony and evidence of the need for a guardian. The court may appoint a guardian if it is satisfied by clear and convincing evidence that the respondent is incapacitated and that the appointment of a guardian is necessary or desirable as a means of providing continuing care and supervision of the person.

DURABLE POWER OF ATTORNEY AND/OR PATIENT ADVOCATE

A copy of any durable power of attorney or patient advocate for the respondent must be filed with the petition for appointment of guardian of incapacitated individual.

REPORT OF PHYSICIAN

A Report of Physician ([PC 630](#)) must also be filed with the petition.

ADULT GUARDIANSHIP QUESTIONNAIRE

The judge requires this form to be completed and filed with the court by the proposed guardian.

ATTORNEY FOR PETITIONER

The law regarding guardianships is quite complicated and the Probate Court and court personnel cannot give you legal advice or act as your attorney. Therefore, it is recommended that the petitioner seek the help of an attorney. This information packet and the forms indicated are provided to help you understand the procedure involved. It is not a complete statement of the law in this area and it is not intended to teach you the law. If you have legal questions, you will need to speak with an attorney.

RESPONDENT'S RIGHTS

GUARDIAN AD LITEM/ATTORNEY FOR THE RESPONDENT

You should be aware that the respondent may contest the petition and is entitled to be present at the hearing. He/she also has the following rights:

- To be represented by an attorney
- To see and hear all evidence
- To examine witnesses and to a trial by jury.

The law also requires the court to appoint a Guardian Ad Litem for the respondent if he/she does not have his/her own attorney. The Guardian Ad Litem is appointed to investigate the matter, to make recommendations to the court, and to represent the best interests of the respondent. He/she may even disagree with the petitioner's request for full or limited guardianship. If the respondent objects to the Petition for Appointment of Guardian, an attorney will be appointed for the respondent.

THE PETITIONER WILL BE REQUIRED TO PAY THE FEES OF THE COURT-APPOINTED GUARDIAN AD LITEM/ATTORNEY FOR THE RESPONDENT AT THE COURT-APPOINTED RATE OF \$35.00 PER HOUR.

SERVICE

The following people must be served with a copy of the Petition for Appointment of Guardian ([PC 625](#)) and Notice of Hearing ([PC 562](#)). The notice of hearing tells the interested persons where and when the hearing will take place.

- 1. The respondent must be served personally at least seven days before the hearing, regardless of the respondent's physical or mental capacity.** He/she must also be served a copy of the Notice of Petition for Guardianship ([PC 626](#)). This means physically handing them the papers or at least touching them with the papers if they are completely incapacitated.
2. The respondent's spouse, children, and parents must be served. These persons can be served by mail at least 14 days before the hearing.
3. If the respondent has no living spouse, children, or parents, the heirs/next of kin must be served by mail at least 14 days before the hearing.
4. In addition to the persons mentioned above, any person who has care and custody of the respondent and any conservator or attorney in fact under a Durable Power of Attorney or Patient Advocate for the respondent must be served by mail at least 14 days before the hearing.
5. The nominated guardian, if he/she is not the petitioner, must be served by mail at least 14 days before the hearing.
6. In special circumstances other persons are also entitled to notice. For example, the Veterans Administration must be served notice if the respondent is eligible for veterans benefits; the Attorney General must be served notice if there are no heirs of the respondent; the Social Security Department must be served if the respondent receives social security benefits; and any person who has filed a Request for Notice with the court must also be served notice.

PUBLICATION

If the address of an interested party is unknown, the petitioner must file a Declaration of Intent to Give Notice by Publication ([PC 617](#)) and publish (at your expense) a Publication of Notice of Hearing ([PC 563](#)) in an Eaton County approved newspaper.

- The County Journal
- The Charlotte Shopping Guide
- The Delta Waverly Community News
- The Grand Ledge Independent
- The Eaton Rapids Community News
- The Flashes
- The Lansing State Journal

NOTICE MUST BE PUBLISHED AT LEAST 14 DAYS BEFORE THE HEARING. The Petitioner must pay the newspaper for this publication in order for the notice to be published in the paper. The newspaper should send us verification of publication; however, it is your responsibility to make sure we receive the verification of publication.

THE HEARING

The proposed guardian must sign an Acceptance of Appointment form ([PC 571](#)) at the time of the hearing.

At the hearing the judge will either grant or deny the petition. If the petition is granted, the order is signed and the court will then issue the Letters of Guardianship.

CERTIFIED COPIES

Certified copies of the Letters of Authority may be obtained after the hearing at \$1.00 per page plus a \$10.00 certification fee.

File/Mail to: EATON COUNTY PROBATE COURT
1045 INDEPENDENCE BLVD
CHARLOTTE, MI 48813

RESPONSIBILITIES AND AUTHORITY OF THE GUARDIAN:

The guardian of an incapacitated individual has many responsibilities. A full guardian basically has the same powers, rights, and duties regarding the ward that a parent has for a minor child, such as authority to make decisions about medical care and where the ward should live. A limited guardian has only those powers that the Probate Judge grants in the Order.

The guardian must file:

- An Annual Report of Guardian on Condition of Legally Incapacitated Individual ([PC 634](#))
- Proof of Service ([PC 564](#))

The guardian must also notify the court within 14 days if the guardian's or the ward's place of residence changes.

The Court will periodically review the guardianship to make sure it is necessary and that the guardian is acting appropriately.

If there are any questions about what a guardian should or should not do concerning his/her ward, the guardian should consult his/her own attorney.

FAILURE TO FILE THE ANNUAL REPORT OF GUARDIAN AND PROOF OF SERVICE CAN RESULT IN THE SUSPENSION OF THE GUARDIAN'S AUTHORITY.

CONSERVATORS

A separate petition and procedure is necessary to have a conservator appointed. Such a petition can be filed along with the petition for guardianship and both can be scheduled for hearing together. An information packet regarding conservatorship is also available.

When filing petitions to have both a guardian and a conservator appointed, the filing fee is \$300.00 (\$150.00 for the Petition for Guardianship, \$150.00 for the Petition for Conservatorship/Protective Order.)

ADULT GUARDIANSHIP QUESTIONNAIRE

For the proposed guardianship of _____
(alleged ward's name)

1. Name and address of proposed guardian(s):

Proposed guardian's Date of Birth: _____

Telephone: (Home) _____ (Work) _____ (Cell) _____

2. In your opinion, why is this guardianship necessary?

3. Does the alleged ward agree with this guardianship?

If not, explain:

4. Do you have any physical and/or mental limitations that would affect your ability to act as guardian?

If yes, explain:

5. What alternatives to guardianship have you considered?

6. Where do you plan to place the alleged ward?

7. Have you ever served as a guardian before?

8. Have you had any contact with a protective services unit of the Dept. of Human Services (DHS) regarding the alleged ward?

If yes, which unit of the DHS?

9. Do you have a criminal history, history of drug or alcohol abuse, or a history of mental health problems?

If yes, explain:

10. List any other information you feel would be helpful to the court:

Date: _____

Signature of proposed guardian(s)

File this form with the Petition for Appointment of a Guardian and mail to Eaton County Probate Court, 1045 Independence Blvd., Charlotte, MI 48813