

**WHAT YOU NEED TO KNOW
BEFORE FILING A PETITION
TO APPOINT A GUARDIAN
FOR AN INCAPACITATED ADULT**

What is a guardian?

A guardian is a person appointed by a probate court and given power and responsibility to make certain decisions about the care of another individual. These decisions might include treatment decisions or where the individual should live. If the individual has a reduced life expectancy because of advanced illness, the guardian may have the power to make an informed decision on behalf of the individual regarding receiving, continuing, discontinuing, or refusing medical treatment. The duties of a guardian are listed in statute.

A full guardian can make all decisions for the individual. A limited guardian can only make decisions for the individual that the court allows.

When can the court appoint a guardian?

The court can appoint a guardian when it finds the person is a legally incapacitated individual and determines that a guardian is necessary.

What is a "legally incapacitated individual"?

A legally incapacitated individual is an adult the court finds to be so impaired by mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, that the individual lacks the understanding or capacity to make or communicate informed decisions.

Is a guardian needed for an individual who may be legally incapacitated?

A guardian might not be necessary if someone already has legal authority to make decisions for the individual and there are no problems with the decisions being made.

»» How is a proceeding for a guardian started?

Any person interested in the individual's welfare may complete a *Petition for Appointment of Guardian of Incapacitated Individual* (form PC 625) and file it, along with the filing fee, with the probate court where the individual resides or is presently located.

»» Is a lawyer necessary?

No, but a lawyer can be helpful, especially if someone objects to the appointment of a guardian, the authority being given, or the person you are asking to be appointed as the guardian.

»» Can mediation be used for disagreements about a guardianship?

Certain disagreements about a request for a guardian may be mediated outside the court if all parties agree to attend mediation or if a judge orders parties to attend mediation. The court clerk can tell you if mediation services are available in your court.

»» What happens when the court accepts a petition for filing?

After the petition is accepted for filing, the court will appoint a person called a guardian ad litem to visit the individual to explain the guardianship proceedings and to make recommendations to the court as a result of the visit.

It is important for you to cooperate with the guardian ad litem. The guardian ad litem does not have the authority to make decisions for the individual. The individual may have to pay for the guardian ad litem. If necessary, the court may also order the individual to be examined by a physician or a mental health professional.

»» What will the guardian ad litem do?

The guardian ad litem will personally visit the individual and explain to the individual the nature, purpose, and legal effects of the appointment of a guardian. The guardian ad litem will:

- 1) give the individual form PC 626, *Notice of Rights to Alleged Incapacitated Individual*, that explains the individual's rights as outlined in MCL 700.5306a(1);
 - 2) explain the hearing procedure to the individual and explain the individual's rights during the hearing;
 - 3) inform the individual of the name of anyone seeking appointment as guardian; and
 - 4) inform the court of the guardian ad litem's determinations about the individual's wishes.
- »» Can the individual get a guardian immediately in an emergency?**
- If an emergency exists, the judge may appoint a temporary guardian to serve until a hearing on the petition can be held.

ALTERNATIVES TO A FULL GUARDIAN

The following five alternatives must be planned by the individual before the individual becomes mentally incapable of making the decisions.

1. Health Care Power of Attorney

Also called a *patient advocate designation* or a *durable power of attorney for health care*. This document enables an individual to name an agent (called a *patient advocate*) to make health care decisions for the individual when he or she is not capable or not competent to do so. The document may cover any type of health care decision including guidance to the agent about the type and extent of health care desired. It can also include authority to withhold or to withdraw life support services.

2. Do-Not-Resuscitate Order

A do-not-resuscitate order is a document directing that the patient named in the order not be resuscitated if the patient's spontaneous respiration and circulation stop in a setting outside a nursing home, hospital, or mental health facility owned or operated by

STATE OF MICHIGAN PROBATE COURT COUNTY OF	ORDER REGARDING APPOINTMENT OF GUARDIAN OF INCAPACITATED INDIVIDUAL	FILE NO.
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In the matter of _____

Court ORI	Date of birth	Race	Sex	Current address of incapacitated individual
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1. Date of hearing: _____ Judge: _____ Bar no. _____

THE COURT FINDS:

2. Notice of hearing was given to or waived by all interested persons.

3. The individual is not in need of a guardian.

4. Upon the presentation of clear and convincing evidence, the individual named above, by reason of
 mental illness mental deficiency chronic use of drugs
 chronic intoxication physical illness or disability other: _____

is impaired to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions and is an incapacitated individual.

5. Upon the presentation of clear and convincing evidence, appointment of a guardian is necessary as a means of providing continuing care and supervision of the individual.

6. The individual is partially totally without the capacity to care for himself/herself.

7. There is no competent, suitable person willing to act as guardian, and the appointment of a professional guardian is in the best interests of the adult. A bond must be filed.

8. Financial protection is required for the individual.

IT IS ORDERED:

9. The petition for appointment of guardian is granted. denied on the merits. dismissed/withdrawn.

10. _____, whose address and telephone number are:
Name (type or print)

Address _____ City _____ State _____ Zip _____ Telephone no. _____

is appointed limited full guardian of the adult and shall qualify by filing an acceptance of appointment.

Bond at \$ _____ must be filed.

The guardian is not permitted to act until letters of guardianship are issued. After qualification, the guardian shall comply with all relevant requirements under the law.

11. Upon acceptance of appointment, the guardian shall petition for the appointment of a conservator or for another protective order under MCL 700.5401 *et seq.*

12. The limited guardian shall have only the following powers:

13. If a guardian is appointed, the Michigan Department of State Police shall immediately enter the legally incapacitated individual's identifying information in this court order on the law enforcement information network.

14. **IT IS FURTHER ORDERED:**

Date _____ Judge _____

Attorney name (type or print) _____ Bar no. _____

Address _____ City _____ State _____ Zip _____ Telephone no. _____

Do not write below this line - For court use only

STATE OF MICHIGAN PROBATE COURT COUNTY CIRCUIT COURT - FAMILY DIVISION	ANNUAL REPORT OF GUARDIAN ON CONDITION OF LEGALLY INCAPACITATED INDIVIDUAL <input type="checkbox"/> FINAL REPORT	FILE NO.
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NOTE: This report must be completed yearly by the guardian, or more often if directed by the court. The guardian must serve the completed report on the ward and all interested persons as required by Michigan Court Rules 5.105 and 5.125. Then the guardian must complete a proof of service (form PC 564) and file it and this report with the court.

In the matter of _____, a legally incapacitated individual

1. I, _____, am the guardian of the adult named above and my annual report for the period of _____ to _____ is as follows.

2. Present age of the adult: _____ Date of birth: _____

3. Living Arrangement

a. The current address and telephone number of the adult are: _____

b. The name of the facility where the adult resides, if any: _____

c. The adult's residence is:

<input type="checkbox"/> own home/apartment	<input type="checkbox"/> guardian's home/apartment	<input type="checkbox"/> other: _____
<input type="checkbox"/> nursing home	<input type="checkbox"/> hospital or medical facility	(boarding home, assisted living, etc.)
<input type="checkbox"/> foster home	<input type="checkbox"/> relative's home: _____	Relationship _____

d. The adult has been in the present residence since _____ Date _____. If moved within the past year, state the changes and the reasons for change.

e. I rate the adult's living arrangement as excellent. average. below average. Explain _____

f. I believe the adult is content with the living situation. unhappy with the living situation.

g. I recommend a more suitable living arrangement for the adult as follows: _____

4. Physical Health

a. The adult's current physical condition is excellent. good. fair. poor.

b. During the past year the adult's physical condition has

remained about the same.

improved. Explain _____

worsened. Explain _____

c. During the past year the adult received the following medical treatment (include check-ups and dental work):

Date	Ailment	Type of Treatment	Doctor's Name

(PLEASE SEE OTHER SIDE)

Do not write below this line - For court use only

5. Mental Health

- a. The adult's current mental condition is excellent good fair poor
- b. During the past year, the adult's mental condition has
 - remained about the same.
 - improved. Explain _____
 - worsened. Explain _____
- c. During the past year, treatment or evaluation by a psychiatrist, psychologist, or social worker was was not provided.

6. Social Activities/Services

- a. The adult's current social condition is excellent good fair poor.
- b. During the past year, the adult's social condition has
 - remained about the same.
 - improved. Explain _____
 - worsened. Explain _____
- c. During the past year, the adult has participated in the following activities:
 - recreational _____
 - educational _____
 - social _____
 - occupational _____
 - No activities were available.
 - The adult refused to participate in any activities.
 - The adult was unable to participate in any activities.

7. List of Visits

- a. During the past year, I visited the adult as follows: _____
List dates
- b. The average amount of time I spent on each visit was _____
- c. The last time I visited with the adult was on _____
Date

8. Activities

During the past year, I performed the following activities on behalf of the adult: _____

9. Consultation

During the past year, I consulted with the adult before making the following decisions: _____

10. I believe the adult has the following unmet needs: _____

11. The guardianship should should not be continued because: _____

12. As guardian, I have been ordered by the court to file an annual account, which is attached.

Date

Address

Signature

City, state, zip

Telephone no.

STATE OF MICHIGAN
PROBATE COURT
COUNTY OF

ACCEPTANCE OF APPOINTMENT AND
REPORT OF GUARDIAN AD LITEM OF
ALLEGED INCAPACITATED INDIVIDUAL

FILE NO.

In the matter of _____, alleged incapacitated individual

1. I have been appointed by the court as guardian ad litem, and I accept this appointment.

2. I have performed the duties required by statute (see reverse side for list of duties).

3. I visited the alleged incapacitated individual on _____ at _____
Date Location

and, to the extent that the individual could comprehend, explained the nature, purpose, and legal effects of a guardian's appointment and otherwise complied with each provision of MCL 700.5305(1).

4. I report to the court as follows:

- a. the alleged incapacitated individual wishes to:
 - have limits placed on the guardian's powers.
 - object to the appointment of the nominated guardian.
 - contest the petition.
 - have an attorney appointed.
- b. There is a disagreement or dispute related to the guardianship, namely _____

I believe it might will not be resolved through court-ordered mediation.

- c. There is one or more appropriate alternative to a full guardianship, namely:
 - 1) appointment of a limited guardian with the following powers: _____
 - 2) appointment of a conservator or a written protective order.
 - 3) the alleged legally incapacitated individual executing one of the following:
 - a patient advocate designation
 - a do-not-resuscitate declaration
 - a durable power of attorney
- d. The alleged incapacitated individual wishes to be present at the hearing.
- e. I believe it is in the best interests of the individual to have legal counsel because _____

The individual will retain legal counsel. I recommend the court appoint legal counsel.

5. One or more of the items in item 4a above is demanded. (no further report or recommendation is required)

OR

None of the items in item 4a above is demanded. My report to the court and recommendations are attached.

Date _____

Signature _____

Address _____

Name (type or print) _____

City, state, zip _____ Telephone no. _____

SEE SECOND PAGE FOR DUTIES OF GUARDIAN AD LITEM

USE NOTE: If this form is being filed in the circuit court family division, please enter the court name and county in the upper left-hand corner of the form.

Do not write below this line - For court use only

DUTIES OF GUARDIAN AD LITEM

Your duties as guardian ad litem include all the following:

1. Visit the individual alleged to be incapacitated.
 2. Explain to the individual the nature, purpose, and legal effects of the appointment of a guardian.
 3. Give the individual form PC 626 that outlines the rights in MCL 700.5306a(1).
 4. Explain to the individual the hearing procedure and the individual's rights in the hearing procedure, including but not limited to:
 - a. the right to contest the petition.
 - b. the right to request limits on the guardian's powers.
 - c. the right to object to a particular person being appointed guardian.
 - d. the right to be present at the hearing.
 - e. the right to be represented by legal counsel and that legal counsel will be appointed for the person if s/he is unable to afford legal counsel.
 5. Inform the individual of the name of any person known to be seeking appointment as guardian.
 6. Ask the individual and the petitioner about the amount of cash and property readily convertible into cash that is in the individual's estate.
 7. Make determinations and inform the court of those determinations, on all the following:
 - a. whether the individual alleged to be incapacitated wishes to be present at the hearing.
 - b. whether the individual alleged to be incapacitated wishes to contest the petition.
 - c. whether the individual alleged to be incapacitated wishes limits be placed on the guardian's powers.
 - d. whether the individual alleged to be incapacitated objects to a particular person being appointed guardian.
 - e. whether there is one or more appropriate alternatives to the appointment of a full guardian or whether other action should be taken in addition to the appointment of a guardian after considering:
 - i. appointment of a limited guardian, including the specific powers and limitation on those powers the guardian ad litem believes appropriate.
 - ii. appointment of a conservator or another protective order under 700.5401 *et seq.*
 - iii. execution of a patient advocate designation, do-not-resuscitate declaration, or durable power of attorney with or without limitations on purpose, authority, or duration.
 - iv. available support from family members. Family members may often take responsibility for the care of an individual. Also, if the individual should be diagnosed as having a reduced life expectancy because of an advanced illness, state law allows a member of the individual's immediate family or next of kin to make informed decisions regarding the individual receiving, continuing, discontinuing and refusing medical treatment and may choose palliative treatment and adequate and appropriate pain and symptom management.
- In the report informing the court of the determinations, include an estimate of the amount of cash and property readily convertible that is in the individual's estate.
- f. whether a disagreement or dispute related to the guardianship petition might be resolved through court-ordered mediation.

STATE OF MICHIGAN
PROBATE COURT
COUNTY OF

NOTICE OF RIGHTS
TO ALLEGED INCAPACITATED
INDIVIDUAL

FILE NO.

Court address

Court telephone no.

Notice that a Petition for a Guardian has been Filed: A petition has been filed in this court asking that a guardian be appointed to help you make personal decisions for you that you now make for yourself.

- If a guardian is appointed for you, the guardian will make decisions for you, such as what medical care you receive and where you live.
- A guardian will be responsible to get services for you that will help you return to managing your own affairs as soon as possible.
- This notice states all of your rights as to this matter. A guardian ad litem may be appointed by the court to more fully explain these rights to you. A guardian ad litem will give you this notice and do the following.
 - The guardian ad litem must visit you in person.
 - The guardian ad litem must explain the nature, purpose, and legal effects of the appointment of a guardian.
 - The guardian ad litem must explain your rights about the guardianship hearing.
 - The guardian ad litem must inform you that you can object to the petition, request limits on the guardian's powers, object to a particular person being appointed as your guardian, come to the hearing, and be represented by an attorney and, if you cannot afford an attorney, to have one appointed at public expense.

You have certain rights before and at the court hearing on the petition to appoint a guardian for you.

- You have the right to have the guardianship case started and conducted where you reside or are present, or if you have been admitted to an institution by a court, in the county in which that court is located.
- You have the right to file a petition on your own behalf to have a guardian appointed for you.
- You have the right to be represented by an attorney. If you cannot afford an attorney, you can ask the court to appoint one for you at public expense.
- You have the right to have a guardian ad litem appointed to represent you if you are not represented by an attorney.
- You have the right to get an independent evaluation of your condition at your own expense. If you cannot afford to pay for the evaluation, the court will approve reasonable costs at public expense.
- You have the right to be present at the hearing. If you wish to be present at the hearing, all practical steps must be taken to ensure your presence, including moving the site of the hearing.
- You have the right to see and hear all the evidence presented during the hearing.
- You have the right to present evidence and cross-examine witnesses at the hearing.
- You have the right to a trial by jury.

See other side for more rights

- You have the right to request that the hearing be closed to the public.
- You have the right to be personally visited by the guardian ad litem, if one is appointed.
- You have the right to be informed of the name of each person asking to become your guardian. If a guardian ad litem is appointed, you have the right to be informed of these names by the guardian ad litem.
- You have the right to be given written notice of the nature, purpose, and legal effects of the appointment of a guardian.
- You have the right to choose the guardian you would like the court to consider appointing, if that person is suitable and willing to serve.
- You have the right to have your incapacity and the need for a guardian proven by clear and convincing evidence.

Rights When a Guardian is Appointed: You have certain rights after a guardian is appointed.

- You have the right have the guardian's powers and the time period of the guardianship be limited to only the amount and time necessary.
- You have the right to have a guardianship that encourages the development of your maximum self-reliance and independence.
- You have the right to prevent a guardian from having powers that are already held by a valid patient advocate.
- You have the right to have a periodic review of your guardianship by the court. You have the right to a hearing and to have an attorney appointed if issues are discovered during the review.
- You have the right to send an informal letter to the judge asking that your guardianship be modified or ended.
- You have the right to have a hearing within 28 days of requesting a review, modification, or termination of your guardianship.
- If a petition to modify or terminate your guardianship is filed, you have the same rights as those on the petition to appoint a guardian, including appointment of a guardian ad litem.
- You have the right to get personal notice of a petition to appoint or remove a guardian.
- You have the right to consult with the guardian about major decisions affecting you, if meaningful conversation is possible.
- You have the right to be visited by your guardian at least once every three months.
- You have the right to have the guardian notify the court within 14 days of a change in your residence.
- You have the right to have the guardian secure services to restore you to the best possible state of mental and physical well-being so you can return at the earliest possible time to managing your own affairs.

Contact the court if you have any questions.