

SAGINAW COUNTY PROBATE COURT HON. PATRICIA J. McGRAW
PROBATE JUDGE/FAMILY DIVISION/10th JUDICIAL CIRCUIT 111 S. MICHIGAN AVE.
SAGINAW MI 48602
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ALTERNATIVES TO FULL GUARDIANSHIPS AND CONSERVATORSHIPS FOR ADULTS

WHAT IS A GUARDIAN

A guardian is a person who makes personal decisions for the ward. A guardian is responsible for the care and control of a ward the same as a parent is responsible for the care and control of a child. A guardian has the power to decide where the ward is to live, what medical treatment the ward receives and may also deal with monetary issues if no conservator is appointed.

WHAT IS A LIMITED GUARDIAN

A limited guardian is a guardian of an adult who possesses fewer than all of the legal rights and powers of a full guardian and those rights, powers and duties are specifically enumerated in the court order. The Courts prefer and are to promote limited over full guardianship.

WHAT IS A CONSERVATOR

A conservator has the authority and responsibility to manage the adults' finances. The conservator does not have the right to make medical decisions or placement decisions. The guardian and conservator can be the same or different person(s).

REQUIREMENTS FOR A COURT ORDERED GUARDIAN

Any person interested in the adult's welfare, including the adult or ward him or herself, can file a petition by using the form entitled "Petition for Appointment of a Guardian of an Incapacitated Individual (PC 625). The petitioner must allege that the adult meets the definition of a legally incapacitated individual, which is as follows:

"A person other than a minor, who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, to the extent that the person lacks sufficient understanding or capacity to make or communicate informed decisions."

The petitioner must also include specific facts about the adult's condition and specific examples of conduct that demonstrates the need for the appointment of a guardian.

FINDINGS REQUIRED BY THE COURT

The Judge must make two findings, first, the individual must be unable to make or communicate informed decisions independently. Secondly, the guardianship must be necessary to provide the continuing care and supervision of the individual without any alternatives.

WHAT IS AN INFORMED DECISION

An individual can make an informed decision or communicate an informed decision if he or she is aware of choices he or she faces, understands the risks and benefits of those options and is able to communicate his or her wishes. An informed decision is not necessarily one which family, and physicians believe are the best choices.

WHO MAY BE APPOINTED GUARDIAN

The Court may appoint any competent person as a guardian of an incapacitated individual. The Court cannot appoint a person that financially benefits from the ward. The Court shall appoint a person designated by the individual unless the Court finds it is not in the best interest of the ward. Otherwise priorities for appointment are listed under MCLA 700.5313.

WHAT ARE DUTIES AND RESPONSIBILITIES OF A GUARDIAN AND CONSERVATOR

Please refer to the back side of the Probate Court letters that are issued by the court as the duties are enumerated there as well as in MCLA 700.5314 (Guardianship PC 633), MCLA 700.5423 (Conservatorship PC 645) and MCLA 330.1631 (Developmental Disability PC 662).

TEMPORARY GUARDIAN OF AN ADULT

Sometimes it is necessary that a temporary guardian be appointed pending a full hearing. That is due to the alleged incapacitated individual who may require immediate medical treatment, immediate placement in a nursing home or some other urgent attention requiring a temporary guardian to be in a position to make personal decisions for the ward. Most times the Court will hold a hearing; within a few hours of receiving the petition as MCR 5.403(b) allows the Court to shorten the period for notice of hearing. The alleged incapacitated individual must still be served personally with the petition and notice of hearing before it can be held.

WHEN IS A CONSERVATORSHIP UNNECESSARY

1. When the individual does not own a home and other assets are of a quite modest value
2. When the individual has a representative payee appointed by the Social Security Administration.
3. When there already exists a plan for incapacity through a durable power of attorney for finances, a living trust or joint bank accounts.
4. When services such as money management or automatic bill paying are available.
5. When a protective order through the court can rearrange assets.

WHEN IS A GUARDIANSHIP UNNECESSARY

1. **When the individual has signed a patient advocate designation:** The law provides that the court cannot grant a guardian any powers held by a patient advocate unless the patient advocate is not fulfilling his or her duties.

A patient advocate designation is a voluntary private agreement by which the individual of sound mind chooses another individual to make care, custody and medical treatment decisions for the individual making the designation.

This document must be signed and witnessed to be legally binding. The ward or individual can revoke the agreement at any time. This document is not filed with the Court and the Court is not involved unless a dispute arises.

In that document the individual can include a statement of general or specific wishes about medical treatment.

Before a patient advocate can act, two events must occur. The patient advocate must have signed an acceptance and then two doctors or one doctor and one psychologist must examine the individual and determine that he/she is unable to participate in treatment decisions.

2. **When the individual has signed a Power of Attorney or Durable Power of Attorney:**

A Power of Attorney is a document signed by a competent person, giving another person the power to manage some or all of his or her affairs.

A Power of Attorney is Durable if it remains valid even if the maker of the Power of Attorney later becomes disabled or incapacitated. A Durable Power of Attorney is the means for a mentally competent adult to grant a person (called an agent) authority to act for him or her if incapacity occurs.

3. **When an individual is enrolled in Medicaid:** State law provides that the individual's nearest relative may consent to medical treatment when an individual who is enrolled in Medicaid is not in a condition to make decisions for him or herself.
4. **When there is no need for legal authority to make decisions:** If there are no decisions pending or the petitioner is already making decisions informally and no one objects.
5. **When there is a Do Not Resuscitate Declaration and Orders:** An individual of sound mind may voluntarily sign a form if he or she does not wish to be resuscitated should his or her heart and breathing stop. This declaration is legally binding outside a hospital or nursing home setting, and it can be useful for an individual who wishes to die peacefully at home.

If an ambulance arrives at the home and the medics are made aware of the document they will check for signs of breathing and pulse, and if no signs, no effort will be made to resuscitate.

A do not resuscitate order for a ward in a hospital or nursing home is usually placed as a notation in an individuals' medical record and states that resuscitation efforts are not to be undertaken in the hospital or nursing home.

There are two standard forms for a do not resuscitate declaration. These copies if completed should be shared with the doctor and family, it is not filed with the court.

6. **When an individual has a representative payee:** You can have another person assigned as your "payee" on SS/SSI or on other government benefits.
7. **When the individuals' concerns are about assets alone:** Consider a Conservatorship or alternatives to a Conservatorship as previously listed.

OTHER RESOURCES

If questions arise regarding the necessity or alternatives to full guardianships of adults, a lawyer should be consulted. The probate staff in your courthouse is prohibited from giving you legal advice since it is their judge that will decide contested issues.

Helpful websites to give you some information are as follows:

1. <http://courts.co.calhoun.mi.us>
2. www.michiganlegislature.org/law/isearch.asp
3. www.ssa.gov/payee - information on representative payees
4. <http://www.probatewayneco.org/>
5. www.irs.gov
6. www.webmd.com
7. courts.michigan.gov