

FORMS FOR GUARDIANSHIP OF AN INCAPACITATED INDIVIDUAL

Forms must be filled out completely. All **ORIGINAL** forms get mailed to the Court; keep copies for your own record.

1. **What You Need to Know Before Filing a Petition** - this explains the duties and other requirements of guardianship of a legally incapacitated individual.
2. **Petition for Appointment of Guardian of an Incapacitated Individual with instructions for completing**- The filing fee is \$150. In order to begin the guardianship process you will need to deliver (by mail or in person) the completed petition to the Court along with your filing fee. If you mail the paperwork, please give the Court two-three days to receive and process your petition.
3. **Notice to Alleged Incapacitated Individual on Petition to Appoint Guardian**- This form must be served upon the individual who is the subject of the petition along with a copy of the petition when it is filed with the Court; this informs that person of what is going on and their rights.
4. **Notice of Hearing**- Call 616-786-4110 to obtain a date and time for your Court hearing. Complete as much of the form as you are able, the rest of the information will be given to you by the Court when you call (date/time/file number).
5. **Proof of Service**- This form tells the Judge that you sent copies of the Petition to Appoint Guardian and Notice of Hearing to all interested parties. Interested parties include but may not be limited to the following:
 - a. Spouse and children of the ward (if no spouse or children, then the heirs at law).
 - b. If known, any person named power of attorney or attorney in fact.
 - c. The nominated guardian or current guardian if already appointed.
 - d. Any government agency paying benefits in care of the individual for which an application may be pending.

Complete the proof of service by filling in the names and addresses of each person served under the appropriate heading; by regular mail or in person and include the date the service was made. **The Court requires that all interested persons be served the required documents no less than 14 days prior to the scheduled hearing if serving by regular mail and no less than 7 days before the scheduled hearing if serving by hand (in person).** Don't forget to **sign and date** the bottom of the form.

*****STOP PLEASE READ*****

You must make every effort to obtain addresses for the people you are required to serve, if you do not know an address you must do the following:

- ✓ Check the phone book
- ✓ Complete an internet search, if possible
- ✓ Contact the Friend of the Court office for a last known address they may have on file
- ✓ Contact any known family members of the person in order to obtain a last known address

Please make all necessary copies of your petition and notice of hearing (including one for yourself and one for each interested party) *ALL ORIGINAL DOCUMENTS NEED TO BE MAILED OR PERSONALLY DELIVERED TO THE COURT

6. **Acceptance of Appointment**- This is signed by the proposed guardian(s); this lets the Court know that the person accepts the guardianship and its responsibilities.

COURT STAFF IS PROHIBITED BY LAW FROM GIVING LEGAL ADVICE, IF YOU HAVE ANY LEGAL QUESTIONS DURING THIS PROCESS PLEASE CONTACT AN ATTORNEY.

Ottawa County Probate Court
12120 Fillmore Street
West Olive MI 49460

Hours Mon-Fri 8:00 AM- 5:00 PM
Phone: 616-786-4110
Website: www.miottawa.org

**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 due to 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 he or she 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 else already has legal authority to make decisions for the person and there are no problems with the decisions they are making.

»» **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 you are asking to be given, or the person you are asking to be appointed 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 *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) explain the hearing procedure and the individual's rights during the hearing.
- 2) inform the individual of the name of anyone seeking appointment as guardian; and
- 3) inform the court of his or her 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 he or she 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 a person to name an agent (called a *patient advocate*) to make his or her health care decisions when 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 the Department of Community Health. The patient must sign the document in the presence of his/her attending physician and two adult witnesses.

If the patient is an adherent of a religious denomination or a church whose members depend upon spiritual means through prayer alone for healing, the adult patient may sign a do-not-resuscitate order that meets special statutory requirements and that does not require the signature of an attending physician.

3. 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. The document must be signed by a notary in the presence of at least one witness.

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/her if incapacity occurs. It usually affects property decision-making but may affect health care decisions. See the Health Care Power of Attorney stated in item 1.

4. Trust

A trust may be a substitute for a conservator and a will. The trust expresses the desires of the maker (called a *settlor*) about the management of his or her assets during his or her lifetime and when physically or mentally unable to manage the assets.

Under a trust, assets are owned by the trust and managed by the trustee for the benefit of the persons to be protected. The trust also names the individuals to whom the assets will go upon the settlor's death. A trustee frequently is the maker of the trust at first and usually names a relative to be the successor. Professional trustees often serve in this highly responsible position.

5. Joint Ownership

Joint ownership involves certain assets to be held by two or more persons and may entitle any of the owners to have control and management of the assets.

Some of the assets that can be held in joint ownership are real estate, bank accounts, corporate stocks, and mutual funds. A joint owner can apply the funds of an account for the disabled co-owner without court action. This can involve the loss of sole control over the funds by the disabled person and can result in dishonest use of funds by the co-owner.

The following five alternatives do not need to be planned by the individual before he or she becomes mentally incapable of making the decisions.

1. Limited Guardian

A guardian who makes only those decisions for the individual that the court allows.

2. Conservator

A conservator is a person appointed by probate court and given power and responsibility for the estate (financial assets and property) of an adult (called a *protected individual*).

If an individual has property such as real estate, large bank accounts, or stock that he or she can no longer manage, it may be appropriate to file a petition for a conservator. See separate instructions on **Conservatorship Proceedings**.

3. Protective Order

When only a single transaction affecting the property of a disabled person is required, the probate court may enter a protective order for this one time matter.

At a hearing, the court may authorize, direct, or ratify any contract, trust, or other transaction relating to that person's financial affairs or estate without appointing a conservator or a guardian.

4. Representative Payee

A representative payee is appointed by a government agency to receive, manage, and spend government benefits for a beneficiary. This is most often done for Social Security benefits. The beneficiary may request a representative payee, but usually the agency requires one when the beneficiary is no longer able to manage benefits.

A payee is approved by the agency and there is no court involvement. The representative payee's authority is limited to the government funds for which he or she is the payee.

5. Special Services for the Aging

Many communities have voluntary services available upon request to help the aging with their financial affairs. Services may include depositing and writing checks, balancing checkbooks, paying bills, preparing insurance claims, preparing tax information and counseling, and applying for public benefits and counseling.

The Commission on Aging and the Family Independence Agency provide these services in many communities as well as church organizations. A person capable of asking for or accepting the services must request the services to receive them.

STATE OF MICHIGAN
PROBATE COURT
COUNTY OF

PETITION FOR
APPOINTMENT OF GUARDIAN OF
INCAPACITATED INDIVIDUAL

FILE NO.

A In the matter of _____, Alleged incapacitated individual **XXX-XX-** Last four digits of SSN

B Date of birth	Race	Sex	Address of alleged incapacitated individual where now found
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C 1. I, _____, Name (type or print), am interested in this matter and make this petition as _____, State interest/relationship.

D 2. An action within the jurisdiction of the family division of circuit court involving the family or family members of the person named above has been previously filed in _____ Court, Case Number _____, was assigned to Judge _____, and remains is no longer pending.

E 3. The adult is a resident of _____, City, village, or township, _____ County, _____ State and has a home address and telephone number of _____, Address _____, City _____, State _____, Zip _____, Telephone no. _____.

The individual is a citizen of the following foreign country: _____
F 4. The adult has a patient advocate/power of attorney for health care. (Specify name and address below.)
 a power of attorney. (Specify name and address below.)
 a conservator. (Specify name and address below.)

Name and address

G 5. The patient advocate designation was not executed in compliance with MCL 700.5506.
 The patient advocate is not complying with the terms of the designation or of MCL 700.5506 to MCL 700.5512.
 The patient advocate is not acting consistent with the ward's best interests.

H 6. The adult lacks sufficient understanding or capacity to make or communicate informed decisions because of
 mental illness. mental deficiency. physical illness or disability.
 chronic intoxication. chronic drug use. _____.

I 7. Specific facts about the adult's recent condition or conduct that lead me to believe the adult needs a guardian are (Attach a separate sheet if more space is needed.)

J 8. The name, address, and telephone number of the person/agency (if any) who currently has care and custody of the adult are _____.

(SEE SECOND PAGE)

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

K 9. The adult is is not entitled to receive Veterans Administration benefits. The Veterans Administration claimant number is _____.

- L** 10. The alleged incapacitated individual has
- a spouse whose name and address are listed below.
 - adult child(ren) whose name(s) and address(es) are listed below.
 - living parent(s) whose name(s) and address(es) are listed below.
 - no spouse, child(ren), or parent(s). The names and addresses of presumptive heirs are listed below.
 - none of the above (must notify Attorney General - see instructions for the address of the Attorney General).

NAME	ADDRESS AND TELEPHONE NUMBER	RELATIONSHIP	AGE/DOB (if minor)

M 11. None of the adults named above is under any legal incapacity except _____.

Give name, legal incapacity, and representative of the person, if any

N 12. **I REQUEST** that the court determine the adult is an incapacitated individual and appoint _____ Name

_____ Address

_____, who has priority as

City _____ State _____ Zip _____ Telephone no. _____

Priority relationship _____, full guardian with all powers provided by statute.
 limited guardian with the following powers:

O 13. No other person appears to have authority to act in the circumstances. I request that a temporary guardian be appointed pending a hearing on this petition because of the following emergency:

I declare under the penalties of perjury that this petition has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

P _____ Attorney signature _____ Date _____

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

Attorney address _____ Petitioner address _____

City, state, zip _____ Telephone no. _____ City, state, zip _____ Telephone no. _____

Q 14. **NOMINATION BY THE ALLEGED INCAPACITATED INDIVIDUAL** In the event the court finds that I require a guardian, I nominate:

_____ Name, address, and telephone no. _____

Date _____ Signature of alleged incapacitated individual _____

INSTRUCTIONS FOR COMPLETING "PETITION FOR APPOINTMENT OF GUARDIAN OF INCAPACITATED INDIVIDUAL"

Please type or print neatly using black or blue ink.

Items A through Q must be read and filled in (when required) before your petition can be filed with the court. Please read the instruction for each item. Then fill in the correct information for that item on the form.

- A** Enter the name of the individual who you believe needs a guardian.
- B** Enter the date of birth, race, and sex of the individual named in **A**. Enter the address where the individual is currently located. This address may or may not be the home of the individual. For example, if the individual is currently in the hospital, enter the address of the hospital.
- C** Enter your name in the first line and your relationship to the individual (or your interest) on the second line.
- D** Check this box if there is or has been a case in the family division of the circuit court involving the individual in **A**. Examples of a family division case are personal protection, abuse or neglect, or a name change. If you have checked this box, enter the name of the court, the case number of the action, the name of the judge assigned to that case. Then place a check in the box indicating whether that case is still pending or not.
- E** Enter the city, village, or township and county and state the individual is a resident of and the full home address and telephone number of the individual.
- F** Check the boxes that apply and provide the name(s) and address(es).
- G** If the individual has a patient advocate and you believe there is a problem, check only the boxes that apply.
- H** Check the boxes that you believe apply to the individual.
- I** **Explain in as much detail as possible** specific examples of the individual's conduct that lead you to believe he or she needs a guardian. Give specific examples of his or her conduct that supports what you checked in **H** and that demonstrate the need for a guardian. **This information is extremely important for the court in making a decision about the need to appoint a guardian.** Use additional sheets of paper if needed.
- J** Enter the name, address, and telephone number of the person or agency who currently has care and custody of the individual. If there is no one, leave blank.
- K** Check whether the individual is or is not entitled to receive Veterans Administration benefits. If you checked that the individual is entitled to benefits, enter his or her VA claimant number.
- L - M** Check all the boxes that apply and enter the names, relationships, addresses and telephone numbers of each relative of the individual. If any of the adults named in **L** are under legal incapacity, enter the names in **M**. If you check the last box in **L** (item 10), you must notify the Attorney General by sending a copy of this form to: Attorney General, Public Administration, PO Box 30736, Lansing, Michigan 48909.
- N** Enter the name, address, and telephone number of the person you want to be appointed as guardian of the individual. Enter the relationship, if any, that this person has to the individual. Check the box for either a full guardian or a limited guardian.
- O** Check the box if there is an emergency requiring the appointment of a temporary guardian before the hearing on this petition is held.
- P** Enter today's date, sign your name, and enter your address and telephone number.
- Q** If the individual wants to nominate someone to be his/her guardian, check the box and enter the name, address, and telephone number of the person the individual is nominating. The individual must sign and date the form.

<p style="text-align: center;">STATE OF MICHIGAN PROBATE COURT COUNTY CIRCUIT COURT - FAMILY DIVISION</p>	<p style="text-align: center;">NOTICE TO ALLEGED INCAPACITATED INDIVIDUAL ON PETITION TO APPOINT GUARDIAN</p>	<p>FILE NO.</p>
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In the matter of _____, alleged incapacitated individual

NATURE, PURPOSE, AND LEGAL EFFECT OF APPOINTMENT OF GUARDIAN

A guardian is a person who is appointed by a court to help an individual make personal decisions when the individual is unable to make such decisions. If a guardian is appointed for you, the guardian will make decisions for you that you now may make for yourself. For example, the guardian could decide such things as what medical care you receive and where you live.

If appointed, the guardian will have the responsibility to secure services for you to restore you to the best possible state of mental and physical well-being so that you can return to self-management at the earliest possible time.

A person has been appointed by the court to more fully explain these matters to you. That person is called a guardian ad litem. He or she will contact you to answer your questions.

RIGHTS

1. You have the right to secure, at your own expense, an independent evaluation of your condition. If you cannot afford to pay for the evaluation, the court will approve reasonable costs at public expense.
2. You have the right to be present in person at the hearing and to see or hear all evidence about your condition. If you wish to be present at the hearing, all practical steps will be taken to ensure your presence, including, if necessary, moving the site of the hearing.
3. You are entitled to be represented by an attorney. If you cannot afford an attorney, you may request the court to appoint one for you at public expense.
4. You have the right to present evidence at the hearing.
5. You have the right to cross-examine witnesses at the hearing, including a court-appointed physician or mental health professional and the visitor.
6. You have the right to a trial by jury.
7. You have the right to request that the hearing be closed to the public.
8. You have the right to contest the petition, to request limits on the guardian's powers, and to object to a particular person being appointed guardian.
9. You have the right to nominate your guardian.

Do not write below this line - For court use only

STATE OF MICHIGAN PROBATE COURT COUNTY OF	NOTICE OF HEARING	FILE NO.
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In the matter of _____

TAKE NOTICE: A hearing will be held on _____ at _____ ,
Date Time

at _____ before Judge _____
Location Bar no.

for the following purpose(s): (state the nature of the hearing)

If you require special accommodations to use the court because of a disability, or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

_____	_____	Date
Attorney name	Bar no.	Petitioner name
_____	_____	Address
Address	_____	City, state, zip
City, state, zip	Telephone no.	City, state, zip
		Telephone no.

USE NOTE TO COURT: If this hearing is for a guardianship matter involving an Indian child as defined in MCR 3.002(5), you must comply with MCR 5.109(2).

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

STATE OF MICHIGAN PROBATE COURT COUNTY OF	PROOF OF SERVICE	FILE NO.
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In the matter of _____

1. Titles of the papers served or mailed: _____

2. According to court rule, I served by first-class mail registered mail (copy of return receipt attached)
 certified mail (copy of return receipt attached) the papers described above on:

Name	Complete address of service	Date

3. According to court rule, I served by **personal service** the papers described above on:

Name	Complete address of service	Date and Time

4. After diligent search and inquiry, I have been unable to find and serve the following interested persons. I have served these persons by publication. Attached are copies of form PC 617.

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Date

Signature

Name (type or print)

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STATE OF MICHIGAN
PROBATE COURT
COUNTY OF

ACCEPTANCE OF APPOINTMENT

FILE NO.

In the matter of _____

1. I have been appointed _____ of the person/estate.
Type of fiduciary

2. I accept the appointment, submit to personal jurisdiction of the court, and agree to file reports and to perform all required duties.

3. For a period of _____ days from the date of my appointment, I exclude from the scope of my responsibility the
not to exceed 91 days

following real estate or ownership interest in a business entity: _____
Describe real property or business interest

because I reasonably believe the real estate or other property owned by the business entity is or may be contaminated by a hazardous substance, or is or has been used in an activity directly or indirectly involving a hazardous substance that could result in liability to the estate or otherwise impair the value of property held by the estate.

Date

Signature

Attorney name (type or print) Bar no.

Name (type or print)

Attorney address

Address

City, state, zip Telephone no.

City, state, zip Telephone no.

Date of birth

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