

Cass County Probate Court

Law & Courts Building
60296 M-62, Cassopolis, MI 49031
Phone: (269) 445-4454 Fax: (269) 445-4453

This document is for informational purposes. It is not a substitute for legal advice. The Cass County Probate Court staff cannot give you legal advice and cannot tell you what to do. If you have legal questions, you should speak with an attorney.

Guardianship – Legally Incapacitated Individual

Filing Fee:

\$175
\$12 for Certified Letters of Guardianship

Forms Used:

[PC 625](#) Petition for Appt. of Guardian of a Legally Incapacitated Individual
[PC 666](#) What You Need to Know Before Filing a Petition to Appt. Guardian for an L.I.I.
**Please date and sign this form at the bottom.*
Cass County Form. [Testimony of Interested Persons Form](#)
Cass County Form: [Criminal History Form for Proposed Fiduciary](#)
Durable Power of Attorney and/or Patient Advocate Designation – If applicable
[PC 626](#) Notice of Rights to Alleged Incapacitated Individual
Must be personally served on the individual to be protected.
[PC 562](#) Notice of Hearing
[PC 617](#) Declaration of Intent to Give Notice by Publication
Used if the address for an interested party is unknown.
[PC 563](#) Publication of Notice of Hearing
Used if the address for an interested party is unknown.
[PC 564](#) Proof of Service
[PC 571](#) Acceptance of Appointment
[MC 97, Personal Identifying Information Form](#)
[MC 97a, Personal Identifying Information - Addendum](#)

After the guardian is appointed:

[PC 631](#) Order Regarding Appointment of Guardian of Incapacitated Individual
[PC 633](#) Letters of Guardianship

[PC 634](#) Annual Report of Guardian on Condition of Legally Incapacitated Individual
This is due annually on the anniversary date of the appointment.
[PC 564](#) Proof of Service
The annual report must be served on the Ward and all interested persons.

*All SCAO approved forms are available at the website listed below:

<https://courts.michigan.gov/Administration/SCAO/Forms/Pages/Probate-Index.aspx>

Interested Persons:

The interested persons need to be listed on the petition, along with their proper address. If an interested person is not included or is not properly served, **the hearing cannot be held**. Per MCR 5.125(C)(23), the persons interested in a Petition for Appointment of a Guardian of an Alleged Incapacitated Individual are:

1. The individual to be protected (must be personally served);
2. If known, a person named as attorney in fact under a Durable Power of Attorney;

3. The individual's spouse;
4. The individual's adult children and parents if living;
5. If no spouse, child, or parent is living, then the presumptive heirs of the individual;
 1. If no presumptive heirs, then the Attorney General.
6. The person who has care and custody of the incapacitated individual;
7. The nominated guardian;
8. A guardian or conservator appointed by the Court in another state, if applicable.
9. Additional interested persons per MCR 5.125(A), may include:
 1. Veteran's Affairs if the individual is receiving benefits;
 2. Any guardian, conservator, or guardian ad litem for an interested person;
 3. Any attorney who has filed an appearance;
 4. Any special fiduciary;
 5. Any person who has filed a request for notice.

Service:

The Petitioner must serve a copy of the Petition and Notice of Hearing on the person to be protected and all interested persons. The interested parties must be served 14 days prior to the hearing if served by mail, or 7 days prior to the hearing if served personally. *MCR 5.108*. The person to be protected must be served personally and must be served with [PC 626](#) – Notice of Rights to Alleged Incapacitated Individual.

The Petitioner must then submit a Proof of Service ([PC 564](#)) prior to the hearing date confirming that all interested persons were served. If all interested persons did not receive proper service, the Judge may dismiss the petition or adjourn the hearing to a later date. Proper notice of the new hearing date will then have to be served on the interested persons by the Petitioner.

Publication may be completed for interested persons whose address or whereabouts are unknown. *MCR 5.105(A)(3)*. In such situations, the Petitioner must complete [PC 617](#) – Declaration of Intent to Give Notice by Publication and [PC 563](#) – Publication of Notice of hearing. The notice must be published in a Cass County newspaper once at least 14 days prior to the hearing. The publication fee is paid directly to the newspaper. For more information on publication, you may wish to contact the newspaper directly. Leader Publications is commonly used as they publish four papers in Cass County. The newspaper will provide the Petitioner with a Proof of Publication, which the Petitioner must file with the Court prior to the hearing.

An interested person can waive notice of a hearing and consent to the relief requested in the petition by completing [PC 561](#) Waiver/Consent. *MCR 5.104(B)(1)*.

Hearing Date:

The petition will be set for a hearing by the Court. Typically, the hearing date is 4-6 weeks after the petition is filed. ***The petitioner must attend the hearing or the petition will be dismissed.***

Appointment of a Guardian ad Litem:

The Court must appoint a Guardian ad Litem (GAL) to represent the interests of the alleged incapacitated individual, unless the person has their own attorney. [MCL 700.5303\(3\)](#).

It will be the GAL's responsibility to visit the person and make a recommendation to the court as to whether or not the guardianship is needed. The GAL charges a fee for their service, which is the responsibility of the Petitioner to pay. This fee does not have to be paid at the time of the filing, but the Court will seek reimbursement from the petitioner at a later date.

Suitability of Proposed Guardian

To evaluate the suitability of the proposed guardian, the Court will request a criminal history check of the proposed fiduciary. Therefore, the proposed guardian will need to complete the Criminal History Authorization form and submit that to the court along with a copy of their driver's license. This form, and the results of the search, will be maintained confidentially.

Guardianship for a Legally Incapacitated Individual

Terms and Definitions

- Petition:** The form filed with the Probate Court that tells the Court why a guardianship is needed and who should be appointed.
- Petitioner:** The person who signs the petition and brings the matter to the attention of the court.
- Respondent:** The subject of the petition who is believed to be a legally incapacitated individual for whom the petitioner is seeking a guardian.
- Conservator:** The person appointed by the Court to manage another person's financial affairs.
- Ward:** Once the Judge determines that the Respondent is legally incapacitated and needs a guardian, he/she is named a Ward of the Guardian.
- Guardian:** The person appointed by the Court who has legal authority to make decisions on behalf of a legally incapacitated individual regarding the person and his/her well-being.
- Guardian ad Litem:** A person appointed by the Judge to investigate and represent the best interests of the respondent.
- Legally Incapacitated Individual:** An adult 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.

Overview

When is a guardianship necessary?

The appointment of a guardian may be necessary for an adult who lacks sufficient understanding or capacity to make or communicate informed decisions because of impairment due to mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause. **If an individual has a developmental disability, the guardianship must be brought under the Mental Health Code. Please see the handout for Guardianships for Individuals with a Developmental Disability.*

Are there any alternatives to a Guardianship?

There may be some alternatives to a guardianship for your specific situation. These alternatives are mentioned on form [PC 666](#), which is included in these materials. When filing a petition for guardianship, the petitioner must sign this form acknowledging that they have read the information. [MCL 700.5303\(2\)](#).

What are the different types of guardianships?

Depending on the needs of the respondent, the Court may appoint a full guardian, temporary guardian, or limited guardian. A full guardian is authorized to make all decisions allowed by law for the incapacitated individual. A limited guardian has authority to make decisions regarding specific areas that would be noted on the Court Order and Letters of Guardianship. A temporary guardian is authorized by the Court to make some or all decisions for the incapacitated individual in an emergency situation and has the authority to act for no more than 28 days (the expiration date will be listed on the Letters of Guardianship).

Who can file the petition?

The petition can be filed by the alleged protected individual, or any person who is interested in the individual's welfare. [MCL 700.5303\(1\)](#).

Where do you file the petition?

The proper venue for a guardianship petition is the county in which the alleged incapacitated individual resides or is found. [MCL 700.5302](#).

What are the Rights of the Alleged Legally Incapacitated Individual?

The subject of the guardianship proceeding must be personally served with [PC 626](#) – Notice of Rights to Alleged Incapacitated Individual, which notes, among other rights, that the individual is entitled to:

- An independent evaluation;
- Be present at the hearing;
- Be represented by an attorney;
- Present evidence and cross-examine witnesses;
- A trial by jury;
- Request that the hearing be closed to the public.

[MCL 700.5306a](#)

Hearing

The Petitioner must attend the hearing or the petition will be dismissed. The petitioner must provide testimony and evidence establishing that the appointment of a guardian is necessary. The Court may appoint a guardian if satisfied by clear and convincing evidence that the statutory grounds for appointment have been met. [MCL 700.5306](#)

What if an Emergency Exists?

If an emergency exists, the Judge of Probate may appoint a temporary guardian until a full hearing can be held. The petitioner should check box 13 on the petition and state the nature of the emergency. The court may schedule an emergency hearing and appoint a guardian ad litem. The alleged incapacitated individual must be personally with a copy of the Petition, Notice of Hearing, and Notice to Alleged Incapacitated Individual on Petition to Appoint Guardian. If a temporary guardian is appointed, the hearing on the permanent guardianship will be set by the Court within 28 days. [MCL 700.5312](#).

Who can be Appointed as Guardian?

A person designated by the respondent who is competent, suitable, and willing to serve has first priority to be appointed. If the respondent does not have a preference, the priority for appointment is as follows:

- A person previously named in a durable power of attorney;
- The spouse or someone nominated by the spouse in his/her will;
- An adult child of the respondent;
- A relative the respondent has lived with for more than 6 months before the petition was filed;
- Someone nominated by the person who is caring for the Respondent or paying for his/her care;
- Any competent adult suitable and willing to serve. [MCL 700.5313](#).

Responsibilities of a Guardian – L.I.I.

The guardian of a legally incapacitated individual has many responsibilities. A full guardian basically has the same powers, rights, and duties respecting the ward that a parent has for a minor child, such as the authority to make decisions about medical care and where the ward should live. If the guardianship is limited, the powers that the guardian has will be specifically listed on the Order and Letters of Guardianship. The court will periodically appoint someone to review the guardianship to ensure that it is still necessary and that the guardian is fulfilling their responsibilities. [MCL 700.5309](#).

The guardian must file an annual report each year on the condition of the ward. [MCL 700.5314](#). The report is due on the anniversary of the date of appointment as guardian. The Court will send out a pre-notice reminder along with the necessary paperwork around the due date of the report. The Guardian must serve the annual report on the ward, the person who has principal care and custody of the ward, the ward's spouse and children, or if no living children, then the presumptive heirs of the ward.

As a reminder of the required filings, the Court will mail the guardian a Notice of Duties after appointment. An example of this notice can be found on the last page of this handout. ****The court***

cannot assist the guardian in filling out the required filings. Failure to file the required paperwork can result in the suspension of the guardian's authority.

Attorney for the Petitioner

The law regarding guardianships is complex, and the court personnel cannot give you legal advice or act as your attorney. Failure to understand the applicable law and court rules is not an excuse for non-compliance. Therefore, it is recommended that the Petitioner seek the advice of an attorney. This informational packet and forms are provided to help you understand the procedure involved. It is not a complete statement of the law and it is not intended to teach you the law. If you have legal questions, you will need to speak with an attorney.

Statutes and Court Rules

- The Michigan Compiled Laws (MCL) that are referenced in this document can be accessed through the link below:
 - [MCL Search](#)
- Many resources can be found on the Michigan Courts website, including the current court rules and the Probate Court forms.
 - [Chapter 5 - Michigan Court Rules](#)

Legal Resources

- **State Bar of Michigan** - <https://www.michbar.org/>
 - **Legal Resource and Referral Center** - <https://lrs.michbar.org/>
- **Michigan Legal Help** - <http://michiganlegalhelp.org/>
- **Legal Aid** - Services are available to individuals who are low-income or over 60 years old, and live in Cass, Kalamazoo, Van Buren, or St. Joseph counties.
 - Contact: (888) 783-8190
 - <https://www.lawestmi.org/>
- **Cass County Council on Aging** - They offer a free legal clinic on a monthly basis that is available to seniors and individuals with disabilities. Please call the organization to learn more. An appointment is required.
 - Contact: (269) 445-8110
 - <http://casscoa.org/>
- **Elder Law of Michigan, Inc.** - They offer a variety of services including pension counseling, benefits access counseling, technical services, and professional services.
 - Contact: (866) 400-9164
 - <https://www.elderlawofmi.org/>

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**The information contained in this notice is an example of the Notice generated by the Court's case management system. After a guardian is appointed, the Court will mail the fiduciary a Notice that will be specific to that guardianship.*

Notice of Duties for Guardianship

As Required by Michigan Court Rules You are Notified:

You are required to file with this court a written report on the indicated form(s) and at the indicated times. Forms are available at the court.

CHANGE OF ADDRESS: You are required to promptly inform the court of any change in the ward's address within 14 days of the change. You are also required to keep the court and interested persons informed in writing within 7 days of any change of your address.

ANNUAL REPORT: Your annual report on condition of the ward is due on the anniversary of your appointment as guardian each year. (Use form [PC 634](#) – L.I.I. or [PC 654](#) – Minor).

In addition, you must serve the report on the ward and interested persons as specified in the Michigan court rules and file proof of service with the court.

[] **ACCOUNTS:** You must file with this court once a year, either on the anniversary date of your letters of authority or on another date you choose (you must notify the court of this date) or more often if the court directs, a complete itemized accounting of your administration of the estate. On termination of the individual's disability, you shall account to the court or to the individual or that individual's successors. The accounts must be served on the required persons at the same time they are filed with the court, along with proof of service. There may be a \$20 filing fee for each accounting filed. (Use form [PC 583](#), [PC 584](#) or [PC 648](#), 'Account').

**The above section does not apply to every guardianship.*

DEATH OF WARD: If the protected individual dies during the guardianship, you must give written notification to the court within 14 days of the individual's date of death. If accounts are required to be filed with the court, a final account must be filed within 56 days of the date of death.

DELEGATION OF DUTIES: You are required by law to notify the court when you delegate duties under a durable power of attorney.

ATTENTION: The above provisions are reporting duties only and are not the only duties required by you. These mandatory provisions are specified in court rules adopted by the Michigan Supreme Court. Your failure to comply may require the court to appoint a special fiduciary in your place and to suspend your powers. This may result in your removal as fiduciary. The court is prohibited by statute from giving you legal advice.

Keep this notice for future reference.

MCR 5.202, MCR 5.402(D), MCR 5.405(C), MCR 5.406(A), MCR 5.409