

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.

Minor Guardianship

Filing Fee: \$175, plus \$12 for Certified Letters of Guardianship

Forms Used:

[PC 670](#) Minor Guardianship Social History

[PC 651](#) Petition for Appt. of Guardian of Minor, OR

[PC 650](#) Petition for Appt. of Limited Guardian, along with

[PC 652](#) Limited Guardianship Placement Plan

*For a limited guardianship, only the custodial parent(s) can petition.

Minor Intake Memorandum

Death Certificate, if parent(s) are deceased

Acknowledgement of Paternity, if applicable

Child Support/Custody Order

[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 653](#) Order Regarding Appointment of Guardian of a Minor

[PC 633](#) Letters of Guardianship

[PC 654](#) Annual Report of Guardian on Condition of Minor

This is due annually on the date of the anniversary of the appointment.

Until the minor reaches the age of seven, the Court will conduct a Guardianship Review hearing. The guardian(s) will receive a Notice of Hearing and must be present at the hearing.

Order for Investigation – Once a petition for guardianship is filed, the Court will order the Department of Health and Human Services to conduct an investigation and report to the Court what is in the best interest of the minor.

*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 [MCL 700.5213](#) and MCR 5.125(C)(20) the following people must be served with the Notice of Hearing:

1. The minor, if 14 years or older (must be personally served);
2. Anyone the minor lived with for the past 63 days before the petition was filed;
3. The minor's parents;
 - If the parents are not living, then the minor's grandparents and the adult heirs of the minor.
4. Proposed guardians;
5. The guardian or conservator appointed in another state to make decisions for the minor, if applicable.
6. Additional interested persons per MCR 5.125(A), may include:
 - Veteran's Affairs if the individual is receiving benefits;
 - Any guardian, conservator, or guardian ad litem for an interested person;
 - Any attorney who has filed an appearance;
 - Any special fiduciary;
 - Any person who has filed a request for notice.
 - If the minor is an Indian child, the minor's tribe and the Indian custodian, if any, and if the parent, custodian, or tribe is unknown, the Secretary of the Interior.

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. 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 per 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, which will typically be held 4-6 weeks from the date of filing. *The petitioner must attend the hearing or the petition will be dismissed.*

Guardianship for a Minor**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.

Guardian of A Minor: The person appointed by the Court who has legal authority as to the care, custody, and control of the minor.

Limited Guardian: A limited guardian has care and control of the minor. However, this type of guardianship differs from a regular guardianship in that the parent(s) are the petitioners and a guardianship placement plan is agreed upon and approved by the Judge. The limited guardian's authority will be specifically listed on the Court's order.

Temporary Guardian: A guardian appointed by the Judge for a limited period of time, either pending the appointment of a full guardian, or when the previously appointed guardian is removed for not properly performing his/her duties. A temporary guardian may not exceed six months.

Guardian ad Litem: A person appointed by the Judge to investigate and represent the best interests of the minor.

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.

Overview

Full Guardianship

This form of guardianship may be necessary when parental duties are not vested in a person by law or court order, or when a parent is unable to effectively carry out his/her duties. One of the grounds for a guardianship for an unmarried minor must exist in order for the Court to grant the petition for a full guardian. [MCL 700.5204\(2\)](#)

- (1) The parental rights of both parents or of the surviving parent have been terminated or suspended by:
 - a. Prior court order,
 - b. Judgement of divorce or separate maintenance,
 - c. Death,
 - d. Judicial determination of mental incompetency,
 - e. Disappearance,
 - f. Confinement in a place of detention.

- (2) The parent(s) have permitted the minor to reside with another person, but have not provided that other person with legal authority for the care and maintenance of the minor.

- (3) All of the following exist:
 - a. The minor's biological parents have never been married to one another, and
 - b. The minor's parent who has custody of the minor dies or is missing and the other parent has not been granted legal custody under court order, and
 - c. The person whom the petition asks to be appointed guardian is related to the minor within the fifth degree by marriage, blood, or adoption.

Limited Guardianship

This type of guardianship can occur when the parents, custodial parent, or surviving parent voluntarily agree to suspend parental rights. [MCL 700.5205](#). The parent(s) would be the petitioners who would file [PC 650](#) Petition for Appointment of Limited Guardian of a Minor. A Limited Guardianship Placement Plan, [PC 652](#), must be completed and signed by the parent(s) and the proposed guardian(s). The Probate Court Judge must approve the plan. A parent agreeing to this plan who substantially fails to comply with the plan without good cause may lose their parental rights. If appointed, a limited guardian has all the powers of a full guardian, except he/she may not release a minor for adoption, or consent to an adoption or marriage.

Alternatives to a Minor Guardianship

There are situations where a parent may execute a power of attorney to delegate to another person, for a time period not to exceed six months, the parent's powers regarding the care, custody, or property of a minor. However, the power to consent to adoption, marriage, or release a minor for

adoption cannot be delegated. [MCL 700.5103](#). The court does not have, nor does it provide a Power of Attorney form.

Who can file the petition and where is it filed?

The petition can be filed by any person interested in the welfare of the minor, or a minor who is 14 years or older. [MCL 700.5204\(2\)](#) and [MCR 5.402\(B\)](#). The proper venue for a guardianship petition is the county in which the minor resides or is present. [MCL 700.5211](#)

Court Appointed Counsel for the Minor

If the Court feels that the minor's interests are not being represented adequately, an attorney may be appointed for the minor. [MCL 700.5213\(4\)](#).

What if an Emergency Exists?

There are situations where the Probate Judge may appoint a temporary guardian for a period not to exceed six months. [MCR 5.403\(D\)](#) and [MCL 700.5213](#). A temporary guardian may be appointed, if need be, pending the proceeding for a permanent guardian. [MCR 5.403\(D\)\(1\)](#). The petitioner would check box #7 on the petition and state, in detail, the reasons why the temporary guardian is necessary. Additionally, a temporary guardian may be appointed if the minor's guardian is not properly performing his/her duties. [MCR 5.403\(D\)\(2\)](#). In such circumstances, the Court may hold a hearing and waive the notice period for the interested persons; however, a minor who is 14 years or older must receive notice. [MCR 5.403\(B\)](#).

Who can be Appointed as Guardian?

The petitioner must nominate someone to serve as the guardian for the minor. However, the Court has discretion as to who is appointed and must appoint someone that will serve the minor's welfare. If the minor is 14 years old and has nominated someone to serve as guardian, the Court will appoint the nominated individual, unless it is contrary to the welfare of the minor. [MCL 700.5212](#).

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. *If a parent of the minor is incarcerated, the Court cannot grant the requested relief if the incarcerated party has not been offered the opportunity to participate in the proceedings as required by [MCR 2.004](#).

If all procedural requirements are met, and the Court is satisfied by clear and convincing evidence that the statutory grounds for appointment have been met, a guardian may be appointed. If the petition is granted, the Court will issue an Order Appointing Guardian ([PC 653](#)). Once the proposed guardian submits a signed Acceptance of Appointment ([PC 571](#)), the Judge will sign Letters of Guardianship ([PC 633](#)) that allow the guardian to act.

Standard Restrictions

In Cass County, the Probate Court Judge typically orders in all guardianship matters that the guardian cannot consent to the marriage or adoption of the minor; cannot consent to a Power of Attorney over the minor; cannot move with the minor out of the State of Michigan without prior approval of the Court; and the guardian shall not allow the minor to reside in any other residence without prior approval of the Court.

When does a guardianship terminate?

A minor guardianship will terminate automatically when the minor turns 18, marries, becomes emancipated, or dies. Additionally, a party may submit a Petition to Terminate the Guardianship ([PC 675](#)) along with a \$20 filing fee to the Probate Court. The matter will then be set for hearing and interested persons must receive notice. Generally, the Court will order the Department of Health and Human Services to investigate and report to the Court as to the best interests of the minor.

Can a guardianship be modified?

A Petition to Modify the Guardianship ([PC 675](#)) can be filed by anyone, including the minor, if 14 years or older. The petition may request, among other relief, that the current guardian be removed or allowed to resign, or to appoint a successor guardian. The matter would be set for a hearing and interested parties must receive notice. A guardian can also be removed by the Court for failing to fulfill his/her responsibilities.

Responsibilities of a Guardian

Generally, the guardian of a minor has the power and responsibilities of a custodial parent. [MCL 700.5215](#). The guardian can make decisions regarding where the minor lives and what activities he/she takes part in. The guardian has obligation to facilitate the minor's education and consent to necessary and proper medical or other professional care for the minor. The guardian is authorized to receive money payable for support, care and education of the minor, and to conserve funds not currently needed by the minor for the minor's future. The guardian cannot pay itself compensation out of the ward's funds unless such compensation has been approved by the court or an independent conservator. Additionally, the court may, at any time, order reasonable support, or order visitation/contact between the minor and his/her parents, for the minor's welfare. [MCL 700.5204\(5\)](#). For a full description of the powers and duties of a guardian of a minor, see [MCL 700.5215](#).

In addition to the responsibilities the guardian has to the minor, there are also filing responsibilities to the Court. An annual report must be filed each year on the condition of the minor, ([PC 654](#)). The Court will send out a pre-notice reminder along with the necessary paperwork around the due date of the report. 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.***

If the minor is under seven years old, the Court will hold an annual Guardianship Review hearing, in which the Court will notify the guardian of the date of the hearing and the guardian must attend. The Court may also review the minor guardianship at any time it deems necessary. [MCR 5.404\(D\)\(1\)](#).

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