

# New Probate Register Orientation Webinar Series

## Adult Guardianships *Incapacitated Individuals*

March 3, 2020

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Michigan Judicial Institute  
***New Probate Register Orientation Webinar Series***  
Adult Guardianships: Incapacitated Individuals

March 3, 2020

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# Guardianships

## *Incapacitated Individuals*

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## Learning/ Training Objectives

- Guardianship Basics
- Full Guardianship
- Temporary Guardianship
- Limited Guardianship
- Foreign Guardian

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## Who is an incapacitated individual?

- Someone who is impaired to the extent that he or she lacks sufficient understanding or capacity to make or communicate informed decisions due to:
  - Mental Illness
  - Mental Deficiency
  - Physical Illness or Disability
  - Chronic Use of Drugs
  - Chronic Intoxication
  - Other Cause (not including minority)
- **NOTE:** Guardianships for individuals with a developmental disability must be brought under the Mental Health Code.

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## Alternatives to Guardianship

MCL 700.5303(2)

- Before a guardianship petition is filed, the court shall provide the person intending to file the petition with written information that sets forth alternatives to the appointment of a full guardian, including but not limited to, a limited guardian, conservator, patient advocate designation, do-not-resuscitate order, physician orders for scope of treatment form (POST), or durable power of attorney with or without limitations on purpose, authority, or time period, and an explanation of each alternative.
  - Options You Should Know Before Filing a Petition for a Full Adult Guardianship (PC 666)

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## Who may petition?

MCL 700.5303(1)

The petition for appointment of a guardian may be filed by an individual on his or her own behalf or by “any person interested in the individual’s welfare”.



## Where to file?

MCL 700.5302

The petition must be filed in the county where the individual who is alleged to be incapacitated resides or is present.

If a court of competent jurisdiction has, pursuant to order, admitted the alleged incapacitated individual to an institution, the petition may be filed in the county where that court is located.



## Initial Filing Fees

\$175.00 Fee

- \$150.00, as specified in MCL 600.880a(1), plus \$25.00 electronic system filing fee under MCL 600.1986(1)(a)

**OR**

Fee Waiver Request (MC 20)

**OR**

\$0.00 if petition is filed by the alleged incapacitated individual or by a governmental agency such as MDHHS

- Probate Fee Schedule:

[https://courts.michigan.gov/Administration/SCAO/Resources/Documents/other/pfee.pdf#search="Probate Court Fee"](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/other/pfee.pdf#search=)



## POLL 1

- Does your court require a criminal background check for fiduciaries?
  - Yes
  - No
  - I don't know
- Does your court require a Central Registry Clearance Request (DHS-1929) check for fiduciaries?
  - Yes
  - No
  - I don't know



## Form and Content of Petition

- Petition for Appointment of Guardian of Incapacitated Individual (PC 625)
  - Effective May 1, 2019, if the State Court Administrator has approved a form for a particular purpose, that form must be used when preparing the document for filing with the court, per MCR 5.113(A), amended by ADM File No 2002-37
- The petition must contain specific facts about the individual's condition and specific examples of the individual's recent conduct that demonstrate the need for a guardian's appointment. MCL 700.5303(1)

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## Who are the interested persons?

MCR 1.104

MCR 5.401

MCR 5.125(C)(23)

- The alleged incapacitated individual
- If known, a person named as attorney in fact under DPOA
- The alleged incapacitated individual's spouse
- The alleged incapacitated individual's adult children
- The alleged incapacitated individual's parents
- If no spouse, adult child or parent is living, the presumptive heirs of the individual
- The person who has the care and custody of the alleged incapacitated individual
- The nominated guardian
- A guardian or conservator appointed by a court in another state to have care and control of the incapacitated individual, if known by the petitioner.

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## Additional interested persons

- The Attorney General - if no presumptive heirs. MCR 5.125(A)(1)
- The Veterans' Administration - If the alleged incapacitated individual has benefits payable by the VA. MCR 5.125(A)(3)
- Guardian, Conservator, or Guardian ad Litem if appointed. MCR 5.125(A)(4)
- An attorney filing an appearance on behalf of an interested person. MCR 5.125(A)(5)
- A special fiduciary. MCR 5.125(A)(6)
- If an interested person, other than the person alleged to be incapacitated, is under a legal disability or is otherwise legally represented, service must be made on the following: the guardian of an adult, conservator, or guardian ad litem of a minor or other legally incapacitated individual. MCR 5.105(D)



## Guardian ad Litem

- Unless the individual who is alleged to be incapacitated has retained counsel, the court shall appoint a guardian ad litem for the individual who is alleged to be incapacitated unless the appointment would cause delay and the person would likely suffer serious harm if immediate action is not taken. MRC 5.403(C)
  - Order Appointing Guardian ad Litem (PC 642)
- The guardian ad litem must visit the individual, report to the court, and take whatever other action the court directs. MCL 700.5305
  - Acceptance of Appointment and Report of Guardian ad Litem Alleged Incapacitated Individual (PC 627)
- If the individual objects, an attorney must be appointed to represent the individual. MCL 700.5305(3)
  - Order Appointing Attorney (PC 628)





## Notice

- The Notice of Hearing (PC 652) must state the time and date, the place and the nature of the hearing. MCR 5.102
- A copy of the Petition for Appointment of Guardian of Incapacitated Individual (PC 625) must be attached to the Notice of Hearing (PC 652). MCL 700.5311(3); MCR 5.107(A)



## Notice

- How can notice be provided:
  - First Class Mail – At least 14 days prior to the hearing date
  - Personal Service – At least 7 days prior to the hearing date
  - Electronic Service – At least 7 days prior to the hearing date and in accordance with MCR 1.109(G)(6)(a)
    - Specific to the electronic filing system (not available in all courts at this time)
- An interested person other than the individual alleged to be incapacitated may waive the right to receive notice of hearing by a statement on the record at the hearing or in writing. Waiver/Consent (PC 561). MCR 5.104(B)(1)



## Notice

- Publication:
  - If the address or location of an interested person other than the individual alleged to be incapacitated is unknown, that person may be served by publication using the Publication of Notice of Hearing (PC 563) after a Declaration of Intent to Give Notice by Publication (PC 617) has been filed with the court.



## Notice to Rights to the Alleged Incapacitated Individual (PC 626)

- In addition to the Petition and Notice of Hearing, the individual alleged to be incapacitated must receive the Notice of Rights to Alleged Incapacitated Individual (PC 626) which includes the nature, purpose, and legal effects of the appointment of a guardian and the rights of the alleged incapacitated individual in the proceeding, including the right to appoint legal counsel. MCL 700.5311(3); MCL 700.5306a
- The individual alleged to be incapacitated must be personally served a copy of PC 626 at least 7 days prior to the hearing. MCR 5.105(B)(1)
- NOTE: The individual alleged to be incapacitated has a right to be present at the hearing and all practical steps should be taken to ensure his or her presence. MCL 700.5304(4)



## Proof of Service (PC 564)

- A Proof of Service must be filed indicating the documents served, the date of service, the manner and method of service, the person or persons served, and an authentication under MCR 1.109(D)(3)(b)
- An individual alleged to be incapacitated may not waive notice of hearing unless the individual attends the hearing or the waiver is confirmed in an interview with a visitor. MCL 700.5311(2)
  - A visitor is a person with no personal interest in the matter, is trained in law, nursing, or social work, and is an officer, an employee, or a special appointee of the court. MCL 700.5101(d)



## POLL 2

- If the petitioner is not represented by an attorney, does your court do the notice?
  - Yes
  - No
  - I don't know



## Documents for hearing

- Order Regarding Appointment of Guardian of Incapacitated Individual (PC 631)
- Acceptance of Appointment (PC 571)
- Letters of Guardianship (PC 633)

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## Entry and Removal of LEIN

(Law Enforcement Information Network)  
MCL 700.5107

- Following entry of the Order Regarding Appointment of Guardian of Incapacitated Individual (PC 631) the court must immediately order the State Police to enter the order into LEIN
  - The court must send a copy of the order via email to [MSPLEINFSS@Michigan.gov](mailto:MSPLEINFSS@Michigan.gov)
- If the court enters an order terminating the guardianship, the court must immediately order the State Police to remove the order into LEIN
  - Removal of Entry From LEIN (MC 239) – the court must send a copy of the removal via email to [MSPLEINFSS@Michigan.gov](mailto:MSPLEINFSS@Michigan.gov)

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## Temporary Guardianship MCL 700.5312(1)

- If there is an emergency and the individual does not have a guardian and no one appears to have the authority to act (DPOA), the petitioner may request a temporary guardian be appointed.
  - Petition for Appointment of Guardian of Incapacitated Individual (PC 625).
  - Box 13 must be checked and a reason provided
- Guardian ad Litem is appointed (PC 642)
- The alleged incapacitated individual must be served the Petition (PC 625), Notice of Rights (PC 626) and a Notice of Hearing (PC 562) for the emergency hearing



## Temporary Guardianship MCL 700.5312(1)

- Hearing to be held regarding the necessity of a temporary guardian
  - Order Appointing Temporary Guardian (PC 632)
    - If granted, Temporary Guardianship will expire on date of full guardianship hearing
  - Acceptance of Appointment (PC 571)
  - Letters of Guardianship (PC 633)
- Hearing on full guardianship must be held within 28 days of temporary appointment, with proper notice to all interested parties



## Limited Guardianship MCL 700.5306(3)

- If there is clear and convincing evidence that a guardian should be appointed, a limited guardian is preferred over a full guardian
- A limited guardian may make decisions in one or more specific areas:
  - Medical Decisions
  - Legal Residence
  - Personal Services
  - Custody of Personal Property
- NOTE : The powers of the limited guardian must be identified in 10a in the Order Regarding Appointment of Guardian of Incapacitated Individual and in 2c in the Letters of Guardianship (PC 633)



## Foreign Guardian MCL 700.5301a MCR 5.108(B)(2)(a) MCR 5.125(C)(20)

- A guardian who has been appointed, has qualified and is serving in good standing in another state may be appointed temporary guardian in Michigan if:
  - A proceeding is not pending in Michigan
  - AND
  - A petition in a protective proceeding is not pending in Michigan
- The temporary guardian is appointed upon the filing of:
  - Application and Order for Appointment of Out-of-State Guardian of Legally Incapacitated Individual (PC 685)
  - An authenticated copy of letters of appointment from the other state
  - An Acceptance of Appointment (PC 571)
- Your Court issues Letters of Temporary Guardianship (PC 633) that expire 28 days after the date of temporary appointment.
- Within 14 days of appointment, the guardian must give notice to the interested person of the appointment and the right to object.
- The temporary guardian will be made full guardian after the filing of a Proof of Service of notice of the appointment, with the right to object on all interested parties.
- If an objection is filed, the temporary appointment continues until the court in this state enters an order removing the guardian .



## Annual Reports

- A guardian shall file a written report annually within 56 days after the anniversary of appointment and at other times as the court may order.
  - Annual Report of Guardian on Condition of Legally Incapacitated Individual (PC 634)
- The guardian must serve the report on the interested persons listed in MCR 5.125(C)(23). MCR 5.409

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## Guardianship Reviews

MCL 700.5309  
MCR 5.408

- The court must appoint an investigator and review a guardianship not later than one year after the guardian's appointment and not later than every three years after each review.
  - After informal review of the Report on Review of Guardianship of Legally Incapacitated Individual (PC 636), the court shall enter an order continuing the guardianship, or enter an Order Appointing an Attorney (PC 628) to represent the legally incapacitated individual for the purpose of filing a petition for modification of guardianship. Order Following Review of Guardianship (PC 637).
  - A copy of the review is sent to the individual and the guardian. MCR 5.408(A)(3)

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## Powers and Duties of Guardian

- MCL 700.5314

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## Modification and Termination

- The guardian's authority and responsibility terminates upon the death of the guardian or ward, upon the determination of incapacity of the guardian, or upon removal or resignation as provided in MCL 700.5310.
  - If an individual who is subject to a guardianship dies, the guardian must give written notification to the court within 14 days of the individual's death. MCR 5.409(F)
- On the petition of the guardian and subject to the filing and approval of a report prepared as required by MCL 700.5314, the court shall accept the guardian's resignation and make any other order that is appropriate. MCL 700.5310

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## Modification and Termination

- Once the court has entered an order appointing a guardian, the ward or any person interested in the ward's welfare may bring a petition to remove the guardian, appoint a successor guardian, or modify the terms of or terminate the guardianship. MCL 700.5310(2)
  - A request for such an order may be made by an informal letter to the court or by using the form Petition to Terminate/Modify Guardianship (PC 675)
    - If a petition comes from the incapacitated individual and that individual does not have an attorney, the court shall immediately appoint an attorney. MCR 5.408(B)(1)
    - If a petition comes from some other party, the court shall appoint a guardian ad litem for the incapacitated individual. If the guardian ad litem ascertains that the incapacitated individual contests the relief requested, the court shall appoint an attorney for the individual and terminate the appointment of the guardian ad litem. MCR 5.408(B)(2)



## Modification and Termination

- Unless provided in the court order finding incapacity, the court must hold a hearing within 28 days after the receipt of the Petition to Terminate/Modify Guardianship (PC 675). MCL 700.5310(2).



## Modification and Termination

- Following the hearing on the Petition for Modification or Termination, the Court shall enter an Order Regarding Termination/Modification of Guardian for Legally Incapacitated Individual (PC 638a)



## RESOURCES

- Michigan Probate Benchbook
- Michigan Probate Sourcebook (ICLE)
- Michigan Guardianship and Conservatorship Handbook (ICLE)



## Guardianships

# Questions?

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## Guardianships

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## Adult Guardianship – Incapacitated Individuals

- Learning / Training Objectives
  - Guardianship Basics
  - Full Guardianship
  - Temporary Guardianship
  - Limited Guardianship
  - Foreign Guardian
  
- Definition of Incapacitated Individual
  - Someone who is impaired to the extent that he or she lacks sufficient understanding or capacity to make or communicate informed decisions due to:
    - mental illness
    - mental deficiency
    - physical illness or disability
    - chronic use of drugs
    - chronic intoxication
    - other cause, not including minority
  - NOTE: Guardianships for individuals with a developmental disability must be brought under the Mental Health Code
  
- Alternatives to Guardianship – MCL 700.5303(2)
  - Before a guardianship petition is filed, the court shall provide the person intending to file the petition with written information that sets forth alternatives to the appointment of a full guardian, including, but not limited to, a limited guardian, conservator, patient advocate designation, do-not-resuscitate order, physician orders for scope of treatment form (POST), or durable power of attorney with or without limitations on purpose, authority, or time period, and an explanation of each alternative.
    - Options You Should Know Before Filing a Petition for a Full Adult Guardianship (PC 666)
  
- Who May Petition? – MCL 700.5303(1)
  - The petition for the appointment of a guardian may be filed by an individual on his or her own behalf or by “any person interested in the individual’s welfare
  
- Where to File? – MCL 700.5302
  - The petition must be filed in the county where the individual who is alleged to be incapacitated resides or is present.
  - If a court of competent jurisdiction has, pursuant to order, admitted the alleged incapacitated individual to an institution, the petition may be filed in the county where that court is located.
  
- Filing Fee – Initial Filing
  - \$175.00 fee
    - \$150.00, as specified in MCL 600.880a(1), plus a \$25.00 electronic system filing fee under MCL 600.1986(1)(a)
  - Fee Waiver (MC 20)

- \$0.00 If petition is filed by the alleged incapacitated individual or by a governmental agency, such as MDHHS
- Probate Fee Schedule:  
[https://courts.michigan.gov/Administration/SCAO/Resources/Documents/other/pfe.pdf#search="Probate Court Fee"](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/other/pfe.pdf#search=)
- Form and Content of Petition
  - Petition for Appointment of Guardian of Incapacitated Individual (PC 625)
    - Effective May 1, 2019, if the state court administrator has approved a form for a particular purpose, that form must be used when preparing the document for filing with the court. MCR 5.113(A), amended by ADM File No 2002-37
  - The petition must contain specific facts about the individual's condition and specific examples of the individual's recent conduct that demonstrate the need for a guardian's appointment. MCL 700.5303(1)
- Interested Persons – MCR 1.104, 5.401, MCR 5.125(C)(23)
  - The alleged incapacitated individual
  - If known, a person named as attorney in fact under a durable power of attorney
  - The alleged incapacitated individual's spouse
  - The alleged incapacitated individual's adult children
  - The alleged incapacitated individual's parents
  - If no spouse, adult child or parent is living, the presumptive heirs of the individual
  - The person who has the care and custody of the alleged incapacitated individual
  - The nominated guardian
  - A guardian or conservator appointed by a court in another state to have care and control of the incapacitated individual, if known by the petitioner.
  - Additional interested persons may be:
    - The attorney general – If no presumptive heirs. MCR 5.125(A)(1)
    - The Veterans' Administration administrator - If the individual has benefits payable by the VA. MCR 5.125(A)(3)
    - Guardian, conservator, or guardian ad litem if appointed. MCR 5.125(A)(4)
    - An attorney filing an appearance on behalf of an interested person. MCR 5.125(A)(5)
    - A special fiduciary. MCR 5.125(A)(6).
    - If an interested person, other than the person alleged to be incapacitated, is under a legal disability or is otherwise legally represented
- Priority for Appointment
  - Unless there is a guardian previously appointed, qualified and serving in good standing in another state, the court must appoint the person designated by the proposed ward if he or she is suitable and willing to serve
  - Absent designation of a suitable or willing person, the court may appoint a person named as attorney in fact or patient advocated through a durable power of attorney
  - Absent either, the statute sets for the following priorities for appointment:
    - The spouse, including a person nominated by the deceased spouse in a will or other writing
    - An adult child

- A parent, including a person nominated by a deceased parent in a will or other writing
    - A relative of the incapacitated individual with whom the subject of the petition has resided for more than six months before the filing of the petition
    - A person nominated by a person who is caring for or paying benefits to the subject of the petition
  - If none of these persons is suitable or willing to serve, the court may appoint any competent person who is suitable and willing to serve, including a professional guardian. The court may not appoint as guardian an agency that financially benefits from directly providing housing, medical, mental health or social services to the incapacitated individual. MCL 700.5313
- Guardian ad Litem
  - Unless, the individual who is alleged to be incapacitated has retained counsel, the court shall appoint a guardian ad litem for the individual who is alleged to be incapacitated unless the appointment would cause delay and the person would like suffer serious harm if immediate action is not taken. MCR 5.403(C).
    - Order Appointing Guardian ad Litem (PC 642)
  - The guardian ad litem must visit the individual, report to the court, and take whatever other action the court directs. MCL 700.5305
    - Acceptance of Appointment and Report of Guardian ad Litem Alleged Incapacitated Individual. PC 627
  - If the individual objects an attorney must be appointed to represent the individual MCL 700.5305(3)
    - Order Appointing Attorney (PC 628)
- Notice
  - The Notice of Hearing (PC 652) must state the time and date, the place and the nature of the hearing MCR 5.102
  - A copy of the Petition for Appointment of Guardian of Incapacitated Individual (PC 625) must be attached to the Notice of Hearing (PC 652). MCL 700.5311(3); MCR 5.107(A)
  - Notice to interested persons
    - Mail Service (First class mail) - At least 14 days prior to the hearing date
    - Personal Service – At least 7 days prior to the hearing date
    - Electronic Service – At least 7 days prior to the hearing date and in accordance with MCR 1.109(G)(6)(a)
      - Specific to the electronic filing system (not available in all courts at this time)
  - An interested person other than the individual alleged to be incapacitated may waive the right to receive notice of hearing by a statement on the record at the hearing or in writing. Waiver/Consent (PC 561). MCR 5.104(B)(1)
  - Publication
    - If the address or location of an interested person other than the individual alleged to be incapacitated is unknown, that person may be served by publication using the Publication of Notice of Hearing (PC 563) after a Declaration of Intent to Give Notice by Publication (PC 617) has been filed with the court
  - Notice to alleged incapacitated individual

- In addition to the petition and notice of hearing the individual alleged to be incapacitated must receive the Notice of Rights to Alleged Incapacitated Individual (PC 626) which includes the nature, purpose, and legal effects of the appointment of a guardian and the rights of the alleged incapacitated individual in the proceeding, including the right to appointed legal counsel. MCL 700.5311(3) and MCL 700.5306a.
  - The individual alleged to be incapacitated must be personally served at least 7 days prior to the hearing. MCR 5.105(B)(1)
  - NOTE: The individual alleged to be incapacitated has a right to be present at the hearing and all practical steps should be taken to ensure his or her presence MCL 700.5304(4)
- Proof of Service - PC 564
  - A proof of service must be filed indicating the documents served, the date of service, the manner and method of service, the person or persons served and an authentication under MCR 1.109(D)(3)(b)
  - An individual alleged to be incapacitated may not waive notice of hearing unless the individual attends the hearing or the waiver is confirmed in an interview with a visitor MCL 700.5311(2)
    - A visitor is a person with no personal interest in the matter, is trained in law, nursing, or social work, and is an officer, an employee, or a special appointee of the court. MCL 700.5101(d)
- Documents for Hearing
  - Order Regarding Appointment of Guardian of Incapacitated Individual (PC 631)
  - Acceptance of Appointment (PC 571)
  - Letters of Guardianship (PC 633)
- Entry and Removal form LEIN (Law Enforcement Information Network) – MCL 700.5107
  - Following an order appointing a guardian for an incapacitated individual, the court must immediately order the State Police to enter the order into LEIN
    - Send copy of order via email to 'MSPLEINFSS@michigan.gov'
  - If the court enters an order terminating the guardianship the court must immediately order the State Police to remove the order into LEIN
    - Removal of Entry From LEIN (MC 239)
    - Send copy of removal via email to 'MSPLEINFSS@michigan.gov'
- Temporary Guardianship – MCL 700.5312(1)
  - If there is an emergency and the individual does not have a guardian and no one appears to have the authority to act (DPOA), the petitioner may request a temporary guardian be appointed.
    - Petition for Appointment of Guardian of Incapacitated Individual (PC 625)
    - Box 13 must be checked and a reason provided
  - Guardian ad litem is appointed (PC 642)
  - The alleged incapacitated individual must be served the Petition (PC 625) Notice of Rights (PC 626) and a Notice of Hearing (PC 562)
  - Hearing to be held regarding the necessity of a temporary guardianship
    - Order Appointing Temporary Guardian (PC 632)
    - Acceptance of Appointment as temporary guardian (PC 571)

- Letters of Guardianship (PC 633)
      - Temporary
      - Expire on date of full hearing
  - Hearing on full guardianship must be within 28 days with proper notice to all interested parties
- Limited Guardianship – MCL 700.5306(3)
  - If there is clear and convincing evidence that a guardian should be appointed, a limited guardian is preferred over a full guardian.
  - A limited guardian may make decisions in one or more specific areas:
    - Medical decisions
    - Legal residence
    - Personal services
    - Custody of personal property
  - Order Regarding Appointment of Guardian of Incapacitated Individual (PC 631)
    - Powers of guardian are specifically listed in number 10a
  - Acceptance of Appointment (PC 571)
  - Letters of Guardianship (PC 633)
    - Powers of guardian are specifically listed in number 2c
- Foreign Guardian – MCL 700.5301a(1); MCR 5.108(B)(2)(a); MCR 5.125(C)(20)
  - A guardian who has been appointed, has qualified and is serving in good standing in another state may be appointed temporary guardian in Michigan if
    - (1) A proceeding is not pending in Michigan and
    - (2) a petition in a protective proceeding is not pending in Michigan.
  - The temporary guardian is appointed upon the filing of:
    - Application and Order for Appointment of Out-of-State Guardian of Legally Incapacitated Individual (PC 685)
    - An authenticated copy of letters of appointment from the other state
    - An Acceptance of Appointment (PC 571)
  - Letters of Guardianship (PC 633) are issued and expire 28 days after the date of temporary appointment.
  - Within 14 days of appointment, the guardian must give notice to the interested persons of the appointment and the right to object.
  - The temporary guardian will be made full guardian after the filing of a proof of service of notice of the appointment, with the right to object, on all interested parties.
  - If an objection is filed, the temporary appointment continues until the court in this state enters an order removing the guardian.
- Annual Reports
  - A guardian shall file a written report annually within 56 days after the anniversary of appointment and at other times as the court may order.
    - Annual Report of Guardian on Condition of Legally Incapacitated Individual (PC 634)
  - The guardian must serve the report on the interested persons listed in MCR 5.125(C)(23). MCR 5.409
- Guardianship Reviews – MCL 700.5309; MCR 5.408



- The court must appoint an investigator and review a guardianship not later than one year after the guardian's appointment and not later than every three years after each review.
  - After informal review of the report, the court shall enter an order continuing the guardianship, or enter an order appointing an attorney to represent the legally incapacitated individual for the purpose of filing a petition for modification of guardianship. PC 637.
  - A copy of the review is sent to the individual and the guardian. MCR 5.408(A)(3)
- Powers and duties of guardian
  - MCL 5314
- Modification and termination
  - The guardian's authority and responsibility terminates upon the death of the guardian or ward, upon the determination of incapacity of the guardian, or upon removal or resignation as provided in MCL 700.5310.
    - If an individual who is subject to a guardianship dies, the guardian must give written notification to the court within 14 days of the individual's death. MCR 5.409(F)
  - On the petition of the guardian and subject to the filing and approval of a report prepared as required by MCL 700.5314, the court shall accept the guardian's resignation and make any other order that is appropriate. MCL 700.5310
  - Once the court has entered an order appointing a guardian, the ward or any person interested in the ward's welfare may bring a petition to remove the guardian, appoint a successor guardian, or modify the terms of or terminate the guardianship. MCL 700.5310(2)
    - A request for such an order may be made by an informal letter to the court or by using the form Petition to Terminate/Modify Guardianship PC 675
      - If a petition comes from the incapacitated individual and that individual does not have an attorney, the court shall immediately appoint an attorney. MCR 5.408(B)(1)
      - If a petition comes from some other party, the court shall appoint a guardian ad litem for the incapacitated individual. If the guardian ad litem ascertains that the incapacitated individual contests the relief requested, the court shall appoint an attorney for the individual and terminate the appointment of the guardian ad litem. MCR 5.408(B)(2)
  - Unless provided in the court order finding incapacity, the court must hold a hearing within 28 days after the receipt of the Petition to Terminate/Modify Guardianship (PC 675). MCL 700.5310(2)
  - Following the hearing on the Petition for Modification or Termination, the Court shall enter an Order Regarding Termination/Modification of Guardian for Legally Incapacitated Individual (PC 638a)
- Resources
  - Michigan Probate Benchbook
  - Michigan Probate Sourcebook (ICLE)
  - Michigan Guardianship and Conservatorship Handbook (ICLE)

## CONTACT INFO

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## **FULL GUARDIANSHIP – QUICK CHECKLIST (Kalamazoo County)**

- Court receives petition and any supporting documents
- Receipt for filing fee
- Set a hearing date/time
- Criminal background check – if required by your court
- Appoint a Guardian ad Litem
  - If individual objects, discharge GAL and appoint attorney for individual
- Notice of hearing
- Proof of service to all interested parties
  - Court serve?
  - Petitioner serve?
- GAL personally serves ward, petition, notice of hearing and notice of rights
- GAL files proof of personal service on ward
- Hearing held/testimony taken
- Order entered
- Acceptance filed
- Letters of guardianship issued
- Send order to MSP for entry into LEIN