
Guardianships and Conservatorships

Dolores M. Coulter

8341 Office Park Dr. Ste C, Grand Blanc, MI 48439

Phone: (810) 603-0801, Fax: (810) 603-0804

Email: coulterdm@sbcglobal.net

What is a guardian and conservator?

A conservator is a person appointed by the Probate Court to manage the financial affairs or property of an individual who is unable to manage his/her finances or property effectively.

A guardian is a person appointed by the Probate Court to make personal decisions for an individual who lacks the capacity or understanding to make those decisions. If no conservator has been appointed, the guardian also has the authority to manage the individual's finances.

Who might need a guardian?

An individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other condition to the extent that the individual lacks sufficient understanding or capacity to make or communicate informed decisions concerning his/her person may need a guardian.

Who might need a conservator?

An individual who is unable to manage his/her property or financial affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance, may need a conservator where the individual has property that will be wasted or dissipated unless proper management is provided or where money is needed for the individual's [or his/her dependents'] support and legal intervention is necessary or desirable in order to provide the money. A conservator may also be appointed for an individual who is mentally competent but unable to manage his/her financial affairs

effectively due to age or physical disability where the individual recognizes the disability and requests the appointment.

Who may petition the Probate Court for appointment of a guardian or conservator?

Anyone who is concerned with the welfare of an individual may petition the Probate Court for appointment of a guardian. Anyone who is interested in an individual's financial affairs or welfare, including the individual's parent, guardian, custodian, or a creditor, may petition the Probate Court for appointment of a conservator.

Who may be appointed as guardian or conservator?

The law requires the Probate Court to follow an order of preference in deciding whom to appoint as guardian or conservator. Unless there is a person appointed by a court in another state and currently serving as guardian or conservator, the first priority is a person named by the individual who is the subject of the petition. The second priority is a person nominated as guardian or conservator in a power of attorney or other writing. The third priority is a person designated as a patient advocate or financial power of attorney. The next priority is a spouse, followed by adult children. The Court can skip over a person with higher preference if that person is not suitable. The same person may be appointed as guardian and conservator. If an individual resides in another state but has property in Michigan that requires management and a conservator was appointed by a court in the individual's home state, that conservator can be appointed by a probate court in Michigan to manage the Michigan property by filing a certified copy of the letters of appointment from the court in the individual's home state and serving notice to interested persons.

Where and how is a petition filed?

Forms are available from the Probate Court Clerk's office which is located on the fifth floor of the Genesee County Courthouse, 900 S. Saginaw Street, Flint. A petition for guardianship must contain specific facts about the individual's condition and specific examples of recent conduct that show the need for a guardianship. It should be

accompanied by a physician's statement explaining why the individual meets the criteria for guardianship. A petition for conservatorship must contain a general description of the individual's property, including estimated values, and sources of income, and should also be accompanied by a physician's statement explaining the need for a conservator.

What happens after the petition is filed?

After the completed petition and supporting documentation is filed the court will set a hearing date. It will then be the petitioner's responsibility to serve notice of the hearing on all interested persons. The notice must be served 14 days prior to the hearing if it is mailed or 7 days prior to the hearing if it is personally served. The individual who is the subject of the petition must be personally served. A proof of service must be filed with the Court prior to the hearing date.

The Court will appoint a guardian ad litem on behalf of the subject of the petition. The guardian ad litem will meet with the individual, explain the petition, advise the individual of his/her right to contest the appointment of a guardian and/or conservator, to request limits on the guardian/conservator's powers, to object to a particular person being appointed, the right to be present at the hearing, the right to be represented by an attorney at the hearing, and the right to a court-appointed attorney if the individual cannot afford to retain an attorney. The guardian ad litem will prepare a report to the Court describing his/her investigation and confirming that the individual was advised of his/her rights. The report may also include a recommendation to the Court on the need for a guardian and/or conservator. If the individual states to the guardian ad litem or to the Court that he/she objects to any aspect of the petition or wants to be represented by an attorney the Court will appoint an attorney.

At the hearing the Court will decide whether the individual meets the legal definition of an incapacitated individual and if so, whether a guardianship is necessary in order to provide continuing care and supervision of the individual. If the Court finds that a full guardianship is not necessary the Court will order a limited guardianship which will give the guardian specific decision-making authority and allow the individual to make other decisions. A guardian must file an acceptance of trust after which the Court will issue

Letters of Guardianship.

If the Court finds that the individual is unable to manage his/her property or financial affairs effectively and has assets over a threshold amount the Court will appoint a conservator or enter an appropriate protective order. If a full conservatorship is not necessary the Court will order a limited conservatorship, which would give the conservator control of specified property and income sources. In order to protect the assets in the conservatorship estate the Court will require the conservator to post a bond in an amount specified by the Court or require that certain accounts be restricted (requiring a court order for any withdrawals from the account). If a bond is required the Court will not issue the Letters of Conservatorship until the bond is filed. A guardian or conservator must obtain prior approval from the Court prior to selling real estate

What if there is an emergency need for a guardian or conservator?

In an emergency situation where there is no one who appears to have the authority to act on behalf of an individual or where the appointed guardian or conservator is not effectively performing his/her duties, the Court can appoint a temporary guardian, special conservator, or enter a protective order. The petitioner must attempt to notify the individual prior to seeking a Court order. If necessary the order can be entered the same day that the petition is filed.

What are the guardian and/or conservator's responsibilities after appointment?

The guardian must file a written report annually with the Court within 56 days after the anniversary date of the Order appointing the guardian and at other times as may be ordered by the Court. The report details the condition of the ward, the condition of the ward's estate that is subject to the guardian's control, any medical treatment which the ward received during the reporting period, the ward's living arrangements, services received, visits by the guardian, and a recommendation as to the need for continuation of the guardianship. Some Probate Courts, including Genesee County, also require the

guardian to file an inventory and an annual accounting. The accounting must list all income and other monies received on behalf of the ward during that year, expenditures, and the assets remaining at the end of the year, with copies of statements verifying the balances in bank accounts.

The conservator must file a complete inventory of the ward's assets with the Court within 56 days of appointment. The conservator must also file an annual accounting with the Court.

The guardian and conservator should keep the ward's funds in a separate account and keep receipts for all transactions. The Court may decide to conduct a complete audit of the ward's account, requiring the guardian or conservator to produce copies of receipts and other documents to verify the assets, income, and expenses listed in the accounting

The failure of a guardian or conservator to file an annual report or an inventory or annual accounting can result in suspension of the guardian or conservator's authority. If the failure persists the Court can remove the guardian or conservator and appoint a successor.

Cautionary note

Since guardianship and conservatorship proceedings can result in substantial restrictions of an individual's rights and in the assumption of substantial legal responsibilities by the guardian or conservator it is advisable to consult with an attorney prior to filing a petition.

The information in this brochure is a summary of the law and procedures relating to guardianships and conservatorships as of the date this brochure was written. An attorney will be able to tell you whether there have been any changes since this brochure was written and advise you on how the law applies to your situation. The Court staff can give your general information about Court procedures and forms but cannot give legal advice.

