

GUARDIANSHIP

Michigan law allows for the appointment of a guardian for a person with disabilities only when necessary and only if the person is unable to care for himself/herself or their estate. Such an appointment is a legally recognized relationship between a suitable adult (guardian) and the person with a disability (ward). When a guardian is appointed, the court authorizes the guardian to exercise certain or all of the ward's legal rights in the best interest of the ward.

Once a child reaches the age of majority (18 in Michigan) the parent's status as guardian of their child terminates. Only through appointment as guardian by a probate court does a formal legal relationship exist. Parents do, however, have a number of options available. They can act as "next of kin" in medical situations, as "representative payee" handling government benefits, as recognized advocate, or as holder of power of attorney.

TYPES OF GUARDIANSHIP AND DUTIES

Partial – will have the specific duties spelled out by court order.

Plenary – precludes a ward from making any important decisions for him/herself or exercising any of his/her rights. (Because of the harshness of this, courts are, under the law, prohibited from imposing guardianship restrictions beyond those actually needed.)

Guardian of estate – authorized to take possession of and manage the estate of the ward in part or totally. This may include personal income, real estate, personal property, negotiable funds, or any other income and assets.

ALTERNATIVES TO GUARDIANSHIP

- Power of Attorney – an individual grants (in writing) the power to another to manage some of his/her estate or affairs.
- Representative Payee – a third party to whom Social Security and SSI benefits are paid to be used for the individual.
- Limited Bank Accounts – accounts requiring a second person's signature before an individual withdrawal or where the size of any one transaction is limited.
- Trust Fund – provides for the distribution of income for the benefit of the beneficiary (person with a disability), before and/or after the death of a parent or spouse.
- Organized Advocacy – ranges from "citizen advocate" to professional paid person. Advocates can play a role in advising, counseling, and persuading.

Guardianship is not “set in concrete.” It is flexible and can be modified at any time. If change is desired, it can be requested by petitioning the probate court. This request can be made either by the guardian or the ward.

STEPS TO PETITION FOR GUARDIANSHIP

1. The probate court in the county of residence of the person with a disability has jurisdiction over guardianship proceedings. The petition and procedures for filing may be obtained from the probate court.
2. Petitions and procedures may vary from probate court to probate court. In all cases the petitioner should include:
 - a. a statement concerning the individual’s capacity to care for him/herself, and a list of areas where a guardian is felt to be needed

In addition the petition must include:

- a. the relationship and interest of the petitioner,
- b. the name, date of birth, and place of residence of the person with a disability,
- c. names and addresses of the person’s current guardian and presumptive heirs,
- d. names and addresses of person or facility in which the person is residing,
- e. description and approximate value of the estate,
- f. name, address and age of proposed guardian and if the proposed guardian is a current provider of services to the individual,
- g. a factual description of the nature and extent of the person’s disability.

The petition also must include reports which contain:

- a. evaluations of the person’s mental, physical, social, and educational condition, adaptive behavior and social skills;
- b. description of the nature and type of developmental disability;
- c. opinion as to whether guardianship is needed, the type and scope;
- d. the specific reason for guardianship;
- e. the signatures of all persons preparing the report(s) – one must be a physician or psychologist;
- f. a recommendation of the most appropriate rehabilitation plan and living arrangement;
- g. a listing of any medications the person is receiving and a description of their effect.

3. A notice will be sent to all interested parties and a hearing will be held and a decision given by the court.

AS PARENTS, you will be notified a year prior to the student reaching age of majority (18). At that time, you will be informed of the rights that will transfer to your child.



And now, the decision-making begins.....

If you do not think your child will be able to make decisions regarding various aspects of life (e.g., education, money management, health care, etc.), then you should consider a whole range of options for supporting your child in these decisions. These options include guardianship, conservator, and power of attorney as well as others.

The following website ~ www.guardianship.org ~ provides a lot of information about the alternatives to guardianship.

A student who has reached age of majority or older and is his or her own guardian may still need help with important decisions. The schools, parents and others may offer the student support, yet final decisions need to be made by the student.

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FOR MORE INFORMATION ABOUT TRANSITION ISSUES, PLEASE CONTACT:

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DEB SMITH, DIRECTOR OF TRANSITION SERVICES
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