



GUARDIANSHIP: Your Rights under the Law

LEGALLY INCAPACITATED INDIVIDUAL

A **guardian** for an adult is someone who is chosen by the court to make decisions in place of that adult. The person with a guardian is often called a **ward**. This paper tells you about your rights if someone tells you that you need a guardian.

In Michigan, there are two types of adult guardianship, depending on how old you are when your disability begins. The rules for both types of guardianships are similar, but there are small differences. **This paper is for people whose disability started after they turned 22.** The court will call this type of guardianship a **guardianship for a legally incapacitated individual.**

You have the right to not have a guardian if you can manage your own life, **even if you need help to do it.**

How is a guardian appointed?

If someone thinks that you need a guardian, they will fill out forms at the probate court and ask for a hearing. You will receive paperwork explaining when the court will have a hearing to see if you need a guardian. **If you do not want a guardian, you must go to court.**

What does the court do after they get the paperwork and set a hearing date?

If you already have a lawyer of your choosing, the court will probably not do anything else until the day of your hearing. You and your lawyer should work together to build your case, which will be discussed more below.

If you do not have a lawyer of your choosing, the court will appoint a **guardian ad litem** to interview you in person. Even though this person is called a guardian ad litem, they are not a guardian. Instead, they are a person appointed by the court to gather facts so the judge can make a decision. When the guardian ad litem visits you, they will do these things:

1. Explain the guardianship process, including your rights;
2. Find out whether you want a guardian;
3. Find out whether you want a lawyer;
4. Decide whether they think that you need a guardian so they can make a recommendation to the judge.

After the guardian ad litem meets with you, they will write a report to the court that talks about the visit. The judge will use the report to help them decide what to do.

Do I have a right to a lawyer?

Yes, but you may need to ask for a lawyer. If you tell the guardian ad litem that you want a lawyer **or** if you tell the guardian ad litem that you want to fight the guardianship, the judge should give you a lawyer. If the guardian ad litem has said that they think you need a guardian, the judge should not appoint them to be your lawyer.

You should try to meet your lawyer to talk about your case. If your lawyer does not contact you, you should call them.

How should I get ready for the hearing?

If you are fighting the guardianship, the judge will be deciding whether you can make certain decisions for yourself, or if a guardian should be appointed to make decisions for you. The judge will probably want you to show that you can do these things:

1. You can understand and give permission for medical care, *even if you have other people help you to understand.*
2. You can manage your own money *or arrange for someone to handle it for you.*
3. You can arrange for food, shelter, clothing, or other service *or make sure that someone else does it for you.*
4. You can arrange to go to work or school if you need *or make sure that someone else helps you.*

You have a right to put on **witnesses** who can testify about how you make decisions. A witness might include a case worker, therapist, family member, or friend. You can also ask for an **independent evaluation**. An independent evaluation is done by a doctor or mental health professional who will explain to the court how well they think you make decisions. You should work with your lawyer to decide how to make the best case with witnesses and an independent evaluation.

What happens at the hearing?

You have the right to have your case decided by a judge or a jury. You can also ask for a **closed hearing** if you do not want to allow strangers to be present for the hearing.

You have a right to be present and to hear all the evidence. If you cannot physically make it to court, the judge needs to take steps to move the hearing to you.

At the hearing, the judge will weigh the evidence and decide if you need a guardian. If the judge decides that you do need a guardian, they will also decide what powers the guardian should have over you. A guardian with all powers allowed by law is called a **plenary guardian** or a **full guardian**.

A guardian with only some powers is called a **partial guardian** or a **limited guardian**.

What happens after the guardian is appointed?

If a full guardian is appointed, they will have these duties unless the court says otherwise:

1. Deciding where you live, either in state or out of state.
2. Arrange for your care, comfort, and maintenance. This generally means making sure that you live in a safe place with the services that you need.
3. Take care of your clothing, furniture, cars, and other property.
4. Consent to medical care or other services.
5. Manage your money.
6. Make a report to the court once a year about how you are doing.

A limited guardian will only have the specific duties given to them by the court.

What if I already have a guardian?

If you already have a guardian, but you think that you can manage at least some things on your own, you need to go back to court. The easiest way to do this is to write an informal letter to the court asking for a change. MPAS has a sample letter and instructions on its website, www.mpas.org. If you feel comfortable, you can also fill out a **Petition to Terminate or Modify Guardianship** and file it with the court. For more instructions on how to do this, contact your local Probate Court.

Once you send the court a letter or file the Petition to Terminate or Modify Guardianship, the process will start again and you will prepare in the same way discussed above.

Is there anything I can do now to prevent having a guardian appointed?

There are many alternatives to guardianship, like having a special document that gives someone you trust the legal power to help you in your life, called a **power of attorney**. Special bank accounts and natural supports like friends and family members may also allow you to avoid guardianship. MPAS also has a paper on Alternatives to Guardianship with more information.

This is not a substitute for legal advice. For more information, contact your attorney or call Michigan Protection & Advocacy Service, Inc. at 1-800-288-5923 or 517-487-1755.

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