

# **Guardianships/Conservatorships for Adults**

## **Oakland County Probate Court**

**Honorable Jennifer Callaghan**

**Honorable Daniel A. O'Brien**

**Honorable Traci Richards**

**Honorable Kathleen A. Ryan**

**#1**

**A series of brochures presented to you by the Oakland County Probate Court**

### **WHAT IS A GUARDIAN AND WHAT IS A CONSERVATOR?**

A **Guardian** is a person who is given Probate Court authority to be responsible for the personal and physical well being of an adult who is called a **Legally Incapacitated Individual (LII)**. The Guardian has the same powers and duties over that LII as parents have over their children. A prospective Guardian may be nominated by petition (filed with the Probate Court) or may be named in a will.

A **Conservator** is a person who is given Probate Court authority to be responsible for the assets (called an "estate") of an adult, who is called a **Protected Individual (PI)**. A Conservator may be nominated by a petition filed with the Probate Court.

\*If this person is an individual with developmental disabilities (IDD), please refer to the mental health brochure for a slightly different, but mandatory appointment procedure for guardians of the person or the estate.

### **WHEN IS A GUARDIAN NEEDED?**

When the individual lacks sufficient understanding or capacity to make or communicate informed decisions about his or her personal well being because of impairment by reason of either:

- Mental illness
- Mental deficiency
- Physical illness
- Physical disability
- Chronic use of drugs
- Chronic intoxication

### **WHEN IS A CONSERVATOR NEEDED?**

When the individual is unable to manage his or her property or business affairs effectively because of either:

- Mental illness
- Mental deficiency
- Physical illness
- Physical disability
- Chronic use of drugs
- Chronic intoxication
- Confinement
- Detention by a foreign power
- Disappearance
- Age or physical infirmity\*

\*If the individual joins in the request for a conservator's appointment and, proper management is required because of either of the following:

- The individual has property that will be wasted or dissipated, or
- Funds are needed for the support, care and welfare of the individual or those entitled to be supported by that individual

### **WHO MAY PETITION THE COURT FOR A GUARDIANSHIP?**

- The alleged LII
- Any person who is interested in the welfare of the alleged LII

### **WHO MAY PETITION THE COURT FOR THE APPOINTMENT OF A CONSERVATOR?**

- The alleged PI
- Any person who is interested in the individual's estate, affairs or welfare
- Any person who would be adversely affected by the lack of effective management of the individual's property and business affairs

### **WHERE AND HOW IS A PETITION FILED?**

#### **Venue**

A guardianship for an alleged LII may be initiated in Oakland County Probate Court if the alleged LII resides or is present in Oakland County.

A conservatorship for an alleged PI may be initiated in Oakland County Probate Court if the alleged PI resides in Oakland County. If the alleged PI does not reside in the State of Michigan, a conservatorship may still be initiated in Oakland County Probate Court if the alleged PI's property to be protected is located in Oakland County.

#### **Probate Court Filing Information**

- The Oakland County Probate Court  
1200 North Telegraph Road, Department 457, Pontiac, Michigan 48341-0457
- Petitions and other forms are available at the counter
- There is a separate filing fee for guardianships and conservatorships. (\$175 each)
- The office is open Monday through Friday, from 8:00 a.m. until 4:30 p.m.
- Petitions must be filed by 4:00 p.m. for same-day processing

### **WHAT HAPPENS AFTER THE PETITION FOR GUARDIANSHIP AND/OR CONSERVATORSHIP IS FILED?**

- A hearing date will be set in approximately 3 to 4 weeks

- The petitioner (the person who signs the petition) must serve a *Notice of Hearing* and a copy of the *Petition* on the alleged LII and PI and all other interested persons
- The petitioner must file a Proof of Service of the *Petition* and *Notice of Hearing* with the Court prior to the hearing
- **The case will be dismissed if the proper persons have not been served, or if the Proof of Service was not filed**
- A Guardian Ad Litem will be appointed to protect the interests of the alleged LII or PI\*
- The Court will appoint legal counsel if the Guardian Ad Litem determines it is in the best interest of the alleged LII or if the alleged LII wishes to contest the petition, limit the Guardian's powers, or object to a particular person being appointed Guardian
- The Court will conduct a hearing to determine whether appointing a Conservator, Guardian, and/or Limited Guardian is in the best interest of the individual. The petitioner must attend unless otherwise directed by the Court
- The Court will appoint a Conservator, Guardian, and/or Limited Guardian only to the extent necessary, and only when satisfied that such an appointment will serve the best interest of the individual
- The Conservator, Guardian, and/or Limited Guardian must file an *Acceptance of Appointment* or a bond, as required by the Court
- The Conservator, Guardian, and/or Limited Guardian cannot act until the Court issues Letters of Authority and/or Letters of Guardianship

If an emergency exists, the Court may appoint a Temporary Guardian or conservator at a hearing following shorter than normally required notice.

\* Exception: If the individual has chosen counsel or the alleged PI is mentally competent but aged or physically infirm.

## **Guardian Ad Litem**

The guardian ad litem who is appointed for an individual has the following duties:

- Visit the individual at his or her residence
- Explain the nature, purpose and legal effects of the proposed appointment
- Explain the hearing procedure and the individual's rights, including the right to be present at the hearing, to contest the petition or object to a particular person
- Inform the individual of the name of each person seeking appointment
- Determine whether there are appropriate alternatives
- Confirm to the court that the Guardian Ad Litem has performed the required duties

## **WHAT CONTACT WILL THE GUARDIAN AND THE CONSERVATOR HAVE WITH THE COURT AFTER APPOINTMENT?**

### **Guardian**

- Must file a written report at least annually with the Court within 56 days after the anniversary of the *Order Appointing Guardian*

- Must use the *Annual Report of Guardian on Condition of Legally Incapacitated Individual* form. (PC 634)
- Must serve the report on the LII and all other interested persons
- Must cooperate with reviews of the guardianship as required by law or court order (generally one year after appointment and every three years thereafter). A review may include an interview and/or home visit
- May be suspended and/or removed for failure to file and/or serve the annual reports

### **Conservator**

- Must file a complete *Inventory* of the protected person's assets with the court within 56 days of appointment. Names and addresses of financial institutions must be listed.
- Must file an itemized accounting of all income and expenses on an annual basis with the court within 56 days of the anniversary of appointment. (PC 583)
- Must present a copy of the financial institution statement along with the *Account* for all liquid assets (anything except real or personal property) dated within 30 days after the end of the accounting period
- Must be able to prove disbursements with receipts or cancelled checks, if necessary
- Must pay a \$20 account filing fee per account
- Must serve the *Inventory* and *Annual Accounts* upon the protected person and other interested persons
- Must file a *Proof of Service* with the court at the time the *Inventory* and *Accounts* are filed (or prior to hearing if set for hearing)
- Must set accounts for hearing to determine whether they will be allowed at least once every three years
- May be suspended or removed for failure to file and/or serve an *Inventory* or *Annual Account* or properly fulfill fiduciary duties
- **Refer to the pamphlet *Inventories, Annual Accounts and Reports (#9)* for more specific information on completing the forms.**

### **WHAT ARE THE DUTIES OF THE GUARDIAN?**

- Consult with the LII prior to any major decision affecting the LII (whenever meaningful communication is possible)
- Provide for the LII's care, comfort, and maintenance, except that:
  - The Guardian is not legally obligated to provide for the LII from the guardian's own money; **and**
  - The Guardian is not liable to third persons by reason of the "parental" relationship for the LII's acts
- Arrange, when appropriate, for training and education
- Care for the LII's clothing, furniture, vehicles, and other personal effects
- Commence a protective proceeding, if necessary, to protect the LII's property
- Give consent or approval necessary for the LII to receive medical or other professional care, counsel, treatment or service
- Report at least annually on the condition of the LII
- Receive and expend money for the LII's support, care, and education (if a Conservator is not appointed)

## **WHAT ARE THE DUTIES OF THE CONSERVATOR?**

- Accumulate, preserve and protect the assets of the protected individual
- Handle those assets as any other competent adult would handle his or her own funds
- Expend reasonable sums as necessary for the ordinary care and support of the protected individual
- Ask court permission before selling or otherwise disposing of the protected individual's real estate (by petition with a copy of the most recent assessor statement or tax statement showing the state equalized value)

Conservators may be held responsible for improper management of the funds if it is a result of bad faith or negligent handling.

## **WHEN MAY A GUARDIANSHIP OR CONSERVATORSHIP BE TERMINATED?**

- When the individual is no longer legally incapacitated or in need of protection
- When the individual has moved to another state and this court is presented with proof of authority from that state, and a receipt of the individual's funds (if applicable) or
- Upon the individual's death

## **WHO MAY PETITION? WHAT IS THE PROCEDURE?**

- Any interested person may petition including the LII or PI
- File one of the following, depending on the circumstance:
  - *Petition to Terminate or Modify a Guardianship (PC 675) or Conservatorship (PC 676)*
  - The LII does not need to use a court form; a simple letter is sufficient
  - Proof of authority from another state; or
  - Proof of death
- A \$20 fee to file a Petition is required for everyone except the LII
- A court hearing will be scheduled for all petitions

### **Before the Conservator Can Be Discharged:**

- The Conservator must file and serve a *Final Account* and present the Financial Institution Statement(s)
- The Court must approve the *Final Account*
- The Court must be satisfied that the assets have been properly protected and preserved
- The Court must be satisfied that the protected individual has received the remaining assets

## **ARE THERE ALTERNATIVES?**

If you have any questions about alternatives, please refer to the brochures entitled *What You Need to Know Before Filing a Petition to Appoint a Guardian for an Incapacitated Adult* (PC 666), and *What You Need to Know Before Filing a Petition to Appoint a Conservator* (PC 667).

Since the above described legal procedures and duties can substantially effect the rights of Legally Incapacitated Individuals or Protected Individuals, as well as to subject the Guardian or Conservator to personal liability, it is recommended that a person who is seeking to be appointed (or who is actually appointed as a Guardian or Conservator) consult with an attorney.

## **NOTES**

### **OAKLAND COUNTY PROBATE COURT**

**1200 NORTH TELEGRAPH ROAD  
PONTIAC MI 48341**

The Probate Court for the County of Oakland does not discriminate on the basis of disability in admission or access to its programs, activities or services as required by Title II of the Americans with Disabilities Act of 1990.

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For more information and forms go to:

[www.oakgov.com/probate](http://www.oakgov.com/probate)