

# Adult Guardianships

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The appointment of guardians for adults who are no longer capable of making decisions for themselves is a significant portion of the Oakland County Probate Court caseload.

Under the Estates and Protected Individuals Code (EPIC), the probate court may appoint a guardian for individuals who are determined by the court to be legally incapacitated. The court may make the appointment upon a finding by clear and convincing evidence that the person is an incapacitated individual (LII) and that the appointment is necessary as a means of providing continuing care and supervision of the individual.<sup>1</sup> "Incapacitated individual" is defined as an individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause to the extent that they lack sufficient understanding or capacity to make or communicate informed decisions.<sup>2</sup>

Proceedings are begun through the filing of a *Petition for Appointment of Guardian of Incapacitated Individual* (PC 625). There is a \$150.00 filing fee that must be paid at the time of application. The petitioner is responsible for serving all interested parties with a copy of the *Petition* and the Notice of Hearing. Proof of Service must be filed with the court prior to the hearing.

Most commonly, petitions are filed by a person interested in the individual's welfare, but they may also be filed by the individual on their own behalf. The petitioner must allege specific facts about the individual's condition and examples of recent conduct by the person that demonstrate the need to have a guardian appointed.<sup>3</sup> A guardianship may be initiated in the Oakland County Probate Court if the alleged LII resides or is present in Oakland County.

When the petition is filed, the court will set a hearing date and appoint a guardian ad litem (GAL) for the individual, unless they already have retained counsel. The GAL is responsible for making a recommendation to the court regarding the need for a guardian.

If the individual wishes to contest the petition, to have limits placed on the guardian's powers, or to object to a particular person being appointed as guardian, the court will appoint an attorney for the individual if they have not already retained one.<sup>4</sup>

A guardianship is to be designed to encourage the development of maximum self-reliance and independence in the individual. If the individual lacks the capacity to do some, but not all of the tasks necessary for their own care, then the court may appoint a limited guardian to provide assistance in the areas where the LII cannot handle matters on their own.<sup>5</sup> In appointing a guardian, the court may appoint a person designated by the LII, if that person is competent, suitable and willing to serve. If there is no such person, MCL 700.5313(3) provides an order of preference for appointment as guardian. If the court finds that neither the nominated guardian nor any individual under MCL 700.5313(3) is appropriate, the court may appoint a competent individual it finds suitable and willing to serve as guardian.<sup>6</sup>

If a guardianship is granted, the guardian will have no authority until they file an *Acceptance of Appointment* or a bond, as required by the court. Once the appropriate documents are received, *Letters of Guardianship* will be issued that detail any limits on the guardian's authority.

Additional information regarding the duties of a guardian can be found at [www.oakgov.com/probate](http://www.oakgov.com/probate). Guardians are also invited to attend the "Basic Training for Guardians" class held on the second Wednesday of each month in courtroom W3 at 11:30 a.m. The class is sponsored by the Citizens Alliance for the Oakland County Probate and Circuit Courts.

## Footnotes

- 1 MCL 700.5306(1).
- 2 MCL 700.1105(a).
- 3 MCL 700.5303(1).
- 4 MCL 700.5305(3).
- 5 MCL 700.5306.
- 6 MCL 700.5313.

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