

Guardianship of an Individual with Legal Incapacity (Adult)

[Download Forms and Instructions](#)

When is a guardianship necessary?

When an individual is impaired by reason of:

1. Mental illness
2. Mental deficiency
3. Physical illness or disability
4. Chronic use of drugs
5. Chronic intoxication
6. Other

The appointment is necessary as a means of providing continuing care and supervision of the incapacitated individual, who lacks sufficient understanding or capacity to make or communicate informed decisions.

Who may file a petition?

1. Any person interested in the individual's welfare.

Where do you file the petition?

1. In the county where the alleged legally incapacitated individual
 - a. Resides; or
 - b. Is present
2. In the county of the court of competent jurisdiction that admitted the alleged legally incapacitated individual to an institution.

Who are the interested persons?

1. The alleged incapacitated individual (Must be served personally)
2. If known, a person named as attorney in fact under a durable power of attorney.
3. The alleged incapacitated individual's spouse
4. The alleged incapacitated individual's children, or, if no adult child is living, the individual's parents.
5. If no spouse, child, or parent is living, the presumptive heirs of the individual.
6. The person who has care and custody of the alleged incapacitated individual.
7. Nominated guardian.

The following may be additional interested persons required by law or court rule:

1. The Attorney General if the protected person has no known presumptive heirs.
2. Foreign counsel if required by law.
3. Administrator of Veteran's Affairs, through the administrator's Michigan district counsel if the individual's benefits are payable by the Veterans' Administration.

4. A guardian, conservator, or guardian ad litem of an interested person.
5. A special fiduciary.
6. A person who filed a demand for notice.

Who prepares the notice of hearing?

A petitioner, fiduciary, or other moving party must cause to be prepared, served and filed a *Notice Of Hearing* (Form PC562). It must state the time, date, place and the nature of the hearing.

What must be included in the proof of service?

It must include a description of the papers served, the date of service, the manner and method of service and the person or persons served.

What are the rights of the individual at the hearing?

A *Notice To Alleged Incapacitated Individual on Petition To Appoint Guardian* (Form PC626) must be served on the individual along with the petition, which lists the rights as follows:

- a. An independent evaluation.
- b. To be present at the hearing.
- c. To be represented by an attorney.
- d. To present evidence at the hearing.
- e. To cross-examine witnesses at the hearing.
- f. To a trial by jury.
- g. To request that the hearing be closed to the public.
- h. To contest the petition, to request limits on the guardian's powers, and to object to a particular person being appointed guardian.
- i. To nominate your guardian.

Who can waive the right to notice of a hearing and consent to the relief requested in the petition?

The waiver and consent may be made by

- a. A legally competent person.
- b. A person designated to be served on behalf of an interested person who is a legally disabled person;
- c. On behalf of an interested person, whether competent or legally disabled, by an attorney who has previously filed a written appearance.

However, a guardian, conservator, or trustee cannot waive or consent with regard to petitions, motions, accounts, or reports made by that person as guardian, conservator or trustee.

When does the notice have to be served?

1. Personal service - 7 days before the date set for hearing.
2. Mail - 14 days before the date set for hearing.
3. Publication - 14 days before the date set for hearing.

What is the form of the petition and its contents?

1. *Petition for Appointment of Guardian of Incapacitated Individual* (Form PC625).
2. Contents - The petition shall contain specific examples of the individual's recent conduct that demonstrates the need for a guardian's appointment.

What does the Court do upon the filing of a *Petition for Appointment of Guardian of Incapacitated Individual*?

1. Set a hearing date.
2. Appoint a guardian ad litem to represent the alleged legally incapacitated individual unless he/she has legal counsel of his/her own choice.
3. If necessary, the court may order that the alleged incapacitated individual be examined by a physician or mental health professional appointed by the Court.

On what does the Court base a decision?

1. The Court must find by clear and convincing evidence that the individual is incapacitated and the guardianship is necessary to provide continuing care and supervision of the individual.
2. A limited guardian is preferred over a full guardian.
3. Only if clear and convincing evidence that the individual is totally without capacity to care for him/herself may the court appoint a full guardian.

What are the reporting requirements once the guardian is appointed?

1. A guardian, at least once every year, shall personally prepare an *Annual Report of Guardian on Condition of Legally Incapacitated Individual* (Form PC634). If the report is not received by the Court each year, within 56 days following the anniversary date of the appointment, the guardian is considered delinquent and subject to serious Court action. However, the Court cannot receive the Annual Report more than 56 days prior to the anniversary date. The "anniversary date" is the month and day the Judge signed the *Letters of Guardianship* (Form PC633).
2. A Proof of Service (Form PC564) must be filed along with the *Annual Report of Guardian on Condition of Legally Incapacitated Individual*, which details who received a copy of the *Annual Report of Guardian on Condition of Legally Incapacitated Individual* as required by Michigan Court Rule.
3. Michigan Court Rule 5.125(C)(23) states that the persons interested in receiving a copy of the report of a guardian of a legally incapacitated individual on the condition of a ward are:
 - a. The ward,
 - b. The person who has principal care and custody of the ward, and
 - c. The spouse and adult children or, if no children are living, the presumptive heirs of the individual.