

Guardianships of Minors & Power of Attorney

There are various types of arrangements available under the Estates and Protected Individuals Code when a minor needs someone other than a parent to make decisions usually made by a parent. The Estates and Protected Individuals Code is an Act adopted by the legislature to govern proceedings in Probate Court.

POWER OF ATTORNEY:

A parent can execute a power of attorney delegating the parent's power regarding the care, custody, or property of a minor for a period not to exceed six months. A guardian of a minor may also execute a power of attorney. MCL 700.5103. If a guardian executes a power of attorney, the guardian must notify the Court within 7 days and provide the Court with the person's name, address, and telephone number.

This power is limited to the extent that it cannot include a power to release a minor for adoption or consent to adoption and marriage. The power of attorney cannot contain an automatic renewal clause. Therefore, any renewal of the power must result from another execution of the power for each period not to exceed six months. The Supreme Court has ruled that a power of attorney may be used to establish school residency when the child resides with a relative. *Feaster v Portage Public Schools*, 451 Mich. 351 (1996).

A power of attorney is ideal for use by parents who are going to take a trip. In fact, when parents leave town even for a short period of time, someone should have the delegated parental powers to make decisions regarding the child or children, especially those decisions centering around consent to medical care. The advantages of a power of attorney over guardianship is that it does not limit the power of the parent to act if the parent chooses to do so, and the power of attorney is not established in Court proceedings.

For more information see [Power of Attorney-Delegation of Guardianship](#).

GUARDIANSHIP:

A guardianship may be established by parental appointment or Court appointment. A parent may appoint a guardian for a minor by will or other writing signed by the parent and attested by at least two witnesses. MCL 700.5201 and MCL 700.5202.

LIMITED GUARDIANSHIP:

A limited guardianship is a voluntary arrangement started in Probate Court when parents want someone else to assume the parental duties. MCL 700.5205. The legislature established this type of guardianship to overcome the shortcomings of the power of attorney. It was also established because the attorney general ruled that a Probate Court cannot appoint a temporary guardian for a minor upon the consent of the minor's parents alone, without making a finding that some other basis was available to establish a guardianship. Op. Atty. Gen. 1980, No. 5782, p. 1002.

Therefore, the Probate Court can appoint a limited guardian when the parents with custody of the minor, or in case of one parent having custody, the sole parent, consents to the appointment of a limited guardian. In addition, the parent(s) must voluntarily consent to the suspension of their parental rights during the term of the limited guardianship.

A petition is a document that starts a case in Probate Court. The petition starting a limited guardianship case must be signed by the parents with custody of the minor, or in the case of one parent having custody, the petition must be signed by the parent having custody of the minor.

The parent(s) and proposed limited guardian(s) must also develop a limited guardianship placement plan, which includes the reason why the parent(s) are requesting a limited guardianship, the parenting time and contact that will take place between the minor and his/her parent(s), the length of the limited guardianship, the arrangements for financial support for the minor, and other provisions the parties agree to include.

This placement plan must be completed and attached to the petition. The parent(s) must be **aware that a parent agreeing to this plan who substantially fails to comply with the plan without good cause may lose their parental rights.**

After a petition is filed, along with the limited guardianship placement plan, the Court designates a court employee to conduct an investigation of the proposed guardianship to determine the suitability of the proposed guardian and the justification for the guardianship.

This form of guardianship overcomes the need to renew a power of attorney every six months, and it gives the guardian *Letters of Guardianship* issued by the Court. Therefore, persons or organizations having contact with the guardian, on behalf of the child, will presumably be more likely to accept the authority of the guardian to act in the place of the parent(s).

A limited guardian may not release a minor for adoption or consent to an adoption or marriage; however, the limited guardian has all the other powers that are conferred upon a full guardian.

If the parent petitions to terminate the limited guardianship and the parent has substantially complied with the limited guardianship placement plan, the Court must grant the petition. The Court may enter orders to assist the child in returning home. If the parent has substantially failed to comply with the limited guardianship placement plan, the Court has several options, including terminating the guardianship or continuing the guardianship for up to one year. If the minor has resided with the limited guardian for not less than one year and if the parents of the minor have failed to provide the minor with parental care, love, guidance and attention, the Court may continue the guardianship, if it is established by clear and convincing evidence to be in the best interests of the minor. A child protective proceeding petition may also be filed in the Family Division of Circuit Court, which may result in termination of the parent's rights.

For more information see [Limited Guardianship of Minors](#).

FULL GUARDIANSHIP:

This form of guardianship might be necessary when parental duties are not vested in a person by law or Court order, or for some reason, the parent is unable to effectively carry out the duties. MCL 700.5204. This type of guardianship cannot be established upon the consent of the minor's parents alone without making a finding that one of the bases exists for appointment of a full guardian.

The Court can appoint a full guardian when parental rights of both parents, or of the surviving parent, have been terminated or suspended by: a) prior court order; b) judgment of divorce or separate maintenance; c) death; d) judicial determination of mental incompetency; e) disappearance; and f) confinement in a place of detention. A basis must be established for both parents. But one parent might fit under one basis; for example, death, and the other parent might fit under another basis: for example, disappearance.

If the child is born out-of-wedlock, and the father's paternity has not been determined in a manner provided by law, the basis for establishment of the guardianship will solely depend on the situation of the mother.

The Court may also appoint a full guardian when the parent(s) permit the minor to reside with another person and do not provide the other person with legal authority for the care and maintenance for the minor and the minor is not residing with his/ her parent(s) when the petition is filed.

The Court may also appoint a full guardian if the minor's biological parents have never been married to one another, and the minor's parent who has custody of the minor dies or is missing, and the other parent has not been granted legal custody under the Court order, and the person whom the petition asks to be appointed guardian is related to the minor within the fifth degree by marriage, blood or adoption.

The full guardianship gives more certainty to the relationship between the guardian and the ward. Its creation generally focuses on the minor's need for a substitute parent because of the parent's temporary or permanent inability to make and execute parental decisions.

This type of guardian has authority to consent to marriage. The guardian also has authority to consent to adoption, or to release the minor for adoption, but the guardian may not execute a consent or release until the Court, after notice and hearing, authorizes the guardian to execute the consent or release.

If the parent petitions to terminate a full guardianship, the Court may appoint an attorney or refer the matter to the Department of Human Services to begin proceedings in the Family Division of Circuit Court, which may result in the termination of the parent's parental rights. The Court may also terminate the guardianship or continue the guardianship for up to one year. If the minor has resided with the guardian for not less than one year and the Court finds that the parents have failed to provide the minor with parental care, love, guidance and attention, the Court may continue the guardianship, if it is established by clear and convincing evidence to be in the best interest of the minor.

For more information see [Full Guardianship of Minors](#).

Other Grounds for Termination of Parental Rights when Child has a Limited or Full Guardian:

Parental rights may also be terminated in the Family Division of Circuit Court if a minor is under a limited or full guardianship and a parent has regularly and substantially failed to support and visit, contact or communicate with the minor for a period of two years or more.

Powers and duties of a Guardian:

A guardian of a minor has the powers and responsibilities of a parent (who is not deprived of custody of a minor) except that the guardian is not legally obligated to provide from the guardian's own funds for the minor and is not liable to third persons by reasons of the parental relationship for acts of the minor.

A guardian must take reasonable care of the ward's personal effects and commence protective proceedings, if necessary, to protect other property of the ward. The guardian may receive money payable for the support of the ward or other money that may be delivered to the ward pursuant to the statute that allows a person to pay or deliver money or personal property to a minor in amounts not exceeding \$5,000 per year. The guardian must apply this money to the current needs for support,

care and education of the minor, and exercise due care to conserve the excess for the minor's future needs, unless a conservator has been appointed for the minor. The guardian may not use any money for compensation for the guardian's services, except as approved by an order of the court. The guardian may start proceedings to compel a person who has a duty to support the minor to pay for sums for the welfare of the minor.

A guardian must facilitate the ward's education, social or other activities, and authorize medical or other professional care, treatment, or advice for the minor.

The Court may, for the welfare of the minor, order reasonable support and reasonable visitation and contact of the minor by his/her parent(s).

A guardian must report to the Court each year the condition of the ward, and the ward's estate, which is subject to the guardian's possession or control. The report must detail the condition of the ward, any medical or mental health treatments or care to which the ward was subjected, and if any reason(s) exists for continuation of the guardianship. This form *Annual Report on Condition of Minor* (Form PC654), is available at Probate Court and must be used to file these annual reports. The powers and duties of a guardian of a minor are found at MCL 700.5215.

The guardian must notify the Court within 14 days of a ward's new address.

The Court may order the review of any guardianship at any time. However, if the minor is under six years of age, the guardianship must be reviewed at least annually.

In conducting the review, the Court shall consider: the parent's and guardian's compliance with either a limited guardianship placement plan or court-structured plan; whether the guardian has adequately provided for the welfare of the minor; the necessity of continuing the guardianship; the willingness and ability of the guardian to continue to provide for the welfare of the minor; the effect upon the welfare of the minor of continuing the guardianship; and any other factor the Court considers relevant to the welfare of the minor. The Court may order the Department of Human Services or an employee of the Court to conduct an investigation and file a report.

Upon the completion of the review, the Court may: 1) continue the guardianship; 2) schedule a hearing and, in a limited guardianship order the parties to modify the limited guardianship placement plan as a condition of continuing the limited guardianship; 3) schedule a hearing and, in the full guardianship, continue the guardianship or order the parties to follow a court-structured plan; 4) terminate the guardianship; 5) continue the guardianship for not more than one year; 6) continue the guardianship if the minor has resided with the guardian for not less than one year, if the Court finds it would serve the best interests of the minor; or, 7) appoint an attorney to represent the minor and refer the matter to the Department of Human Services.