

Guardianships/Conservatorships for Minors

Oakland County Probate Court and Circuit Court – Family Division

**Honorable James M. Alexander
Honorable Martha D. Anderson
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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 person and physical well-being of a minor (called a ward). The Guardian has the same powers and duties over the ward as parents have over their children except that the Guardian is not obligated to support the ward from his/her own funds. A prospective Guardian may be nominated by petition, or may be named in a will or “another writing.”

A **Conservator** is a person who is given Probate Court authority to be responsible for the assets (called an estate) of a minor (called a protected person). A Conservator may be nominated by petition filed with the Probate Court or by a deceased parent’s will.

WHEN IS A GUARDIAN NEEDED?

“Full Guardian”

- When the minor is unmarried and parental rights of both parents have been terminated or suspended by:
 - Prior court order
 - Judgment of Divorce or Separate Maintenance
 - Death
 - Mental incompetence as determined by the court
 - Disappearance
 - Confinement in a place of detention

Or

- When the parent(s) have permitted the minor to reside with another person, but have not provided that other person with the legal authority for the care and maintenance of the minor.

Or

- All of the following:
 - 1) The minor's biological parents have never been married to one another AND
 - 2) The minor's parent who has custody dies or is missing and the other parent has not been granted legal custody under court order AND
 - 3) The person whom the petition asks to be appointed guardian is related to the minor within the fifth degree by marriage, blood or adoption.

"Limited" Guardian

This guardianship can be done at any time for any reason *if the parents, custodial parent, or surviving parent voluntarily agree to suspend parental rights and the Probate Court approves. The parent(s) and proposed guardian(s) must both sign a Limited Guardianship Placement Plan.

** A Limited Guardianship cannot be used solely to establish residency for school purposes.*

WHEN IS A CONSERVATOR NEEDED?

When the minor has money, property or property interests that require protection or management because the minor is not an adult.

WHEN IS A CONSERVATOR NOT NEEDED?

When a minor is entitled to receive money or personal property not exceeding \$5,000 per year. The money or property may be given to:

- The minor if he or she is married
- The person who resides with and has the care and custody of the minor
- The Guardian of the minor
- A state or federally insured financial institution holding a savings account in the sole name of the minor with notice of the deposit to the minor

WHO MAY PETITION THE COURT FOR FULL GUARDIANSHIP?

- Any person who is interested in the well-being of the minor
- Minors who are at least 14 years old

A Guardian nominated in the will or another writing of the remaining parent may be appointed as the *Testamentary Guardian* of the surviving child(ren) upon simply filing an *Acceptance of Appointment* with the Court.

WHO MAY PETITION THE COURT FOR LIMITED GUARDIANSHIP?

- Both parents must petition
- If there is only one legal parent, only that parent must petition
- If one parent has custody, only that parent must petition. The non-custodial parent must be notified of the hearing
- Generally, the petitioning parent(s) must attend the court hearing

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

- Minors who are at least 14 years old
- Any other person who is interested in the protection of the minor's assets
- Other persons who would be adversely affected by the lack of proper management of the protected person's estate

WHERE AND HOW IS A PETITION FILED?

Venue

A guardianship of a minor may be initiated in Oakland County Probate Court if the minor resides or is present in Oakland County at the time the guardianship proceeding is commenced. MCL 700.5211

A conservatorship for a minor may be initiated in Oakland County Probate Court if the minor resides in Oakland County. If the minor does not reside in the State of Michigan, a conservatorship may still be initiated in Oakland County Probate Court if the minor's property to be protected is located in Oakland County. MCL 700.5403

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 \$150 filing fee for each guardianship and conservatorship
- The office is open Monday through Friday, from 8:00 a.m. until 5:30 p.m.
- Petitions must be filed by 5:00 p.m. for same day processing

WHAT HAPPENS AFTER THE PETITION IS FILED?

- A hearing date will be set (except for *Testamentary Guardians* who will be appointed immediately upon filing an *Acceptance of Appointment*)
- Petitioner must serve a *Notice of Hearing* and a copy of the *Petition* on the minor (if at least 14 years old) and all other interested persons
- 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 parties have not been served, or if the *Proof of Service* was not filed**
- A *Guardian Ad Litem* and/or a *Children's Advocate* may be appointed to protect the interests of the minor. They will be given court documentation as proof of their authority
- On guardianships, the Court will conduct a record check on the proposed guardians and individuals living in their home
- The Court will conduct a hearing to determine whether appointing a *Conservator*, *Guardian* and/or *Limited Guardian* is in the best interest of the minor
- The Court will appoint a *Conservator*, *Guardian* and/or *Limited Guardian* only when satisfied that such an appointment will serve the best interest of the minor
- The *Conservator*, *Guardian* and/or *Limited Guardian* must then file an *Acceptance of Appointment* and/or bond, as required by the Court
- The *Conservator*, *Guardian*, and/or *Limited Guardian* **cannot** act until the Court issues Letters of Authority (Conservator) or Letters of Guardianship (Guardianship)

Guardian Ad Litem

The *Guardian Ad Litem* has the responsibility to do the following:

- Visit the minor at his or her residence
- Explain the nature, purpose, and legal effects of the proceedings
- Explain the hearing procedure and the minor's rights during the hearing
- Inform the minor of the name of each person known to be seeking appointment
- Determine the suitability of the minor's proposed residence
- Confirm to the Court that he or she has performed the required duties

Children's Advocates

The court may appoint a Children's Advocate to do a home study and assess the appropriateness of a guardianship.

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

Guardian

- Must file a written report describing the condition of the ward, at least annually with the Court, within 56 days after the anniversary of appointment
- Must serve report on interested persons
- Must use the report form provided by the Court (PC 654)
- May be suspended or removed for failure to file and/or serve the annual reports
- Must cooperate with the annual review of the guardianship, by the court, of all minors under the age of six. A review may include an interview and/or home visit

Conservator

- Must file, with the Court, a complete *Inventory* of the minor's assets within 56 days of appointment
- Must serve the *Inventory* upon the minor (if at least 14 years old) and other interested persons
- Must file an itemized accounting of all income, expenses, and remaining property, at least annually with the Court, within 56 days of the anniversary of appointment (PC 583)
- Must serve the *Annual Account* upon the minor (if at least 14 years old) and other interested persons and file *Proof of Service* with the court at the time the account is filed
- Must be able to prove income and expenses by receipts and canceled checks, if necessary
- Must pay \$20 fee for filing the account
- Must file a completed *Proof of Restricted Account and Annual Verification of Funds on Deposit* form with the court within 28 days of the conservator's qualification and then annually
- Must attach Financial Institution Statements to the *Proof of Restricted Account* for all liquid assets, dated within 30 days after the end of the accounting period
- May be suspended or removed for failure to file and/or serve an *Inventory*, *Annual Account* or the *Verification of Funds*

* Refer to the brochure [Inventories, Annual Accounts and Reports](#) for more specific information on completing the forms

WHAT ARE THE DUTIES OF THE GUARDIAN?

- Care and provide support for the ward just as parents do for their own child(ren); except that:
 - The Guardian is not legally obligated to provide for the ward from the guardians' own money; and

- The Guardian is not liable to third persons by reason of the “parental” relationship for the ward’s acts
- Care for the ward’s personal effects
- Commence a protective proceeding if necessary to protect the ward’s property
- Receive money payable for the ward’s support
- Expend money received for the ward’s support, care and education
- Conserve any excess for the ward’s future needs
- Facilitate the ward’s education, and social or other activities
- Authorize medical or other professional care, treatment, or advice
- Report annually to the Court as to the ward’s condition
- May consent to the ward’s marriage or adoption*

* Except a Limited Guardian may not consent to the minor’s marriage or adoption.

WHAT ARE THE DUTIES OF THE CONSERVATOR?

- Accumulate, preserve and protect the assets of the protected person
- 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 person
- Ask court permission before selling or otherwise disposing of the protected person’s real estate
- Invest available funds pursuant to the restrictions on the Letters of Authority or subsequent court orders

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?

The only time a guardianship ends automatically is when the minor becomes 18 years of age, becomes emancipated, marries or dies. Other than that, a petition **must** be filed to end a guardianship or conservatorship and the judge must make a determination as to whether it is in the best interests of the minor.

For instance, a guardianship does not end just because the guardian returns the minor to the parents. The guardian will still be legally responsible until a petition is filed, a hearing is set, and a judge makes a determination that the guardianship should be terminated.

Anyone, including the minor who is 14 or older, may petition to remove a guardian or conservator, to appoint a successor guardian or conservator, or to request a termination of the guardianship or conservatorship. The judge will make a determination at a hearing after notice to interested persons.

Before the court will discharge a conservator from responsibility:

- The Conservator must file a *Final Account*, *Proof of Restricted Account* and 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 minor (now an adult) must sign a receipt for the remaining assets

Since the above described legal procedures and duties can substantially affect the rights of minors as well as 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 Guardian or Conservator consult an attorney prior to accepting this trust.

**OAKLAND COUNTY PROBATE COURT
REBECCA A. SCHNELZ,
PROBATE COURT ADMINISTRATOR
JILL KONEY DALY,
PROBATE REGISTER
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