

# Understanding Adult Guardianships

Ernschie Augustin, © 2020

In everyday conversation, the word “guardian” could have many meanings. But in elder law, and in a probate court, the term is used more precisely. In legal terms means someone who is appointed by the court to make decisions about the personal care needs of someone who is unable to make decisions for themselves.

Michigan law allows for at least three distinct types of guardians to be appointed.

The first type is the appointment of a guardian for a “minor,” someone who is under the age of 18, and who therefore has not reached adulthood.

The second type of guardian in Michigan law is a guardian over a person with “developmental disabilities.” This is defined as someone who, prior to the age of twenty-two, has developed or been born with a condition that will limit that person’s ability to manage their own affairs.

The rest of this article will focus on the third type of Michigan guardianship, which is a guardian appointed over an adult who was competent to make their own decisions but who, as a result of some change in their mental faculties, is no longer able to do so. In recent times, with the increase in the number of people living longer and the resulting increase in age-related cognitive conditions, including Alzheimer’s Disease, courts have seen an increase in these types of cases. And many Michigan families have faced the prospect of going to court to seek the appointment of a guardian for an aging loved one. For those families, the process is often intimidating, confusing and even frightening.

The purpose of this article is to help the reader understand the process, some of the terms that are used in the process and hopefully to reduce some of the confusion and corresponding fear.

## Guardian vs Conservator

In the right circumstances, probate courts can appoint a guardian or conservator, or both, for an adult who can no longer make decisions for themselves, or who would otherwise benefit from the protection of the court. The difference between these two appointed positions is that a guardian is appointed to assist with medical decisions and decisions about personal care needs. A conservator is appointed to assist with the management of the protected person’s income and assets.

## The Court Process

The person or agency that files for guardianship is called the “Petitioner.” The person subject to the guardianship is called the “ward.”

The adult may need a guardian for a variety of reasons such as mental deficiency, mental illness, or physical illness or disability. The condition giving rise to the need for the

appointment may be temporary or permanent. When filling out a petition for guardianship, it's important to explain the reasons why the guardianship is needed. Medical records are typically the best source of that information.

Once completed, a guardianship petition is filed with the probate court in the county in which the adult resides. After the petition is filed, a hearing date is set and interested parties are given notice, which includes a copy of the petition and information about when the hearing will be held. The probate court will also appoint a Guardian Ad Litem ("GAL"). The GAL serves as the eyes and ears of the court. Their role is to investigate the adult's condition and provide a written report to the court.

Keep in mind the adult subject to the guardianship will receive notice of the petition and may decide to hire an attorney to "contest" the petition or may choose to respond on their own. The law is designed to allow a proposed ward to be heard and to participate in the process to the extent they are able to do so. This includes the right to hire an attorney, call witnesses and attend the hearing.

If the Judge appoints a guardian at the hearing, the Judge will sign a written Order and direct that "letters of authority" be issued to the appointed guardian. In deciding a case, the Judge may appoint the person that the Petitioner has requested, may appoint another person or even an agency, or may deny the petition, depending on the facts of the particular cases.

Once a person has been appointed guardian over an adult, they are required to regularly report to the court and the other people who have an interest in the affairs of the ward and to let the court know if they or the ward moves.

### Power of Attorney

The best way to minimize the need for a guardian is to have a medical power of attorney (designation of patient advocate) executed prior to the adult's cognitive impairment. The person you name to manage your medical affairs is called your "agent" or "patient advocate." A medical power of attorney only becomes effective if, and when, two doctors certify that you are no longer able to make your own decisions.

Keep in mind that the person you name as your patient advocate would normally have priority to be appointed as your guardian should that ever become necessary.

In most situations a medical power of attorney is preferable to a guardianship because it does not require court involvement or oversight.

### New Visitation Limited Guardian

In response to a growing number of guardianship petitions being filed in situations where the only issue in dispute is which friends and family members should be allowed to have access to an impaired older adult, Michigan's legislature recently passed a new law which provides for the appointment of a "limited" guardian to supervise visits with the ward. That new law took effect March 2020.

## Conclusion

This article is an attempt to offer an overview of Michigan's law regarding adult guardianships. For the sake of brevity and readability, the information contained in this article is simplified. There are many aspects of Michigan's guardianship law that are not addressed in this article or not fully explained. This article is not intended to replace the advice of an attorney who practices in the area of elder law or who handles adult guardianship proceedings.