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Probate Court

The Constitution of Michigan provides that "The jurisdiction, powers and duties of the Probate Court and the Judges thereof shall be provided by law." The legislature, through the enactment of various statutes, has defined the specific work of the Probate Court.

The Probate Court has jurisdiction over cases pertaining to admission of wills, administration of estates and trusts, treatment of mentally ill, guardianship and conservatorships for minors, adults, and adults who are developmentally disabled.

There are many other areas of Probate Court jurisdiction, which have been defined by the legislature through the enactment of statutes.

In addition to the above roles, the Probate Judge also acts as a Family Court Judge dealing with Juvenile delinquency, child abuse and neglect cases, name changes, adoptions, emancipation proceedings, divorce, custody and paternity cases which overlap with the traditional juvenile caseload, to assure that one judge handles all family issues for one family.

Probate Court handles various types of cases, including:

- Decedent's estates and supervision of trusts
- Small estates
- Guardianships and/or conservatorships of both children and adults
- Guardianships for developmentally disabled individuals
- Protective Orders
- Mental Health Proceedings
- Drain Appeals
- Secret marriages
- Order treatment for people with contagious diseases who refuse treatment.
- Delayed registrations of foreign birth
- Wavers of Parental Consent
- Applications to open safe deposit boxes
- Will deposit for decedent or deposit for safekeeping
- Registration of Trusts

COURT FORMS

The State Court Administrative Court Office of the Michigan Supreme Court has a webpage <http://courts.michigan.gov/scao/courtforms> with forms used in all courts. The court forms are organized by type of proceeding.

PROBATE COURT FEES

Probate Court Fee and Distribution Schedule
<http://courts.michigan.gov/scao/resources/other/pfee.pdf>

Court Hours

The Probate Court office hours are Monday through Friday from 8:00 a.m. to 4:30p.m.

In compliance with The Americans with Disabilities Act, The Presque Isle County Probate Court of the State of Michigan invites individuals with disabilities who require special accommodations to participate in court hearings or other court business to contact the Presque Isle County Courthouse in order to request an accommodation.

Office of Public Guardian

The Office of Public Guardian serves adults with mental and/or physical disabilities as their court-appointed legal guardian when they are incapable of managing some or all of their affairs.

The Office of Public Guardian was established to serve area adults with mental or physical disabilities which render them unable to manage their own affairs. Upon the filing of an appropriate petition* a court determination will be made as to whether the subject of the petition may require the protection of court intervention. If so, then the Office of Public Guardian provides quality public assistance in the form of guardianship services to legally incapacitated vulnerable adults who have no family, friends, or resources to obtain a private guardian.

Through the provision of public guardianship services and under the direction of the court, the public guardian strives to:

- enhance quality of life,
- employ “substituted judgment,” acting as the person would have when making decisions in their best interests,
- protect against abuse, neglect and exploitation, and
- safeguard and exercise the fundamental civil rights of the people we serve

Guardianship is a serious step! Just because the person has a disability does not mean he or she needs a guardian. Guardianship is usually inappropriate if there are other alternatives such as a durable power of attorney, medical proxy, or public benefits representative. As a general rule, use of the public guardian is appropriate only in those instances when family or friends are unavailable or antagonistic.

You are always welcome to contact our staff for more information regarding making a referral or possible alternatives.

Disclaimer

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The material at this site is provided for informational purposes only, and should not be relied on in lieu of professional advice. The material on this site should not be construed as providing a legal opinion or advice regarding any specific issue. Consult a lawyer concerning any legal questions that you have.

Where an official printed document differs from text which may be provided at this site, the official printed document takes precedence.

Links to other sites or organizations are provided when it is believed that they will be of interest to users of this website.

The Court does not endorse such sites or organizations and is not responsible for the content of any such sites.

COURT LINKS

State Bar of Michigan

www.michbar.org

Michigan Courts

www.courts.michigan.gov

State of Michigan

www.michigan.gov

Department of Human Services

www.michigan.gov/dhs

Michigan Court Rules

<http://coa.courts.mi.gov/rules/>

Michigan Legislature

www.legislature.mi.gov

INVENTORY FEES

Amount:

Submit Query

Inventory Fees

Inventory fees are rounded to the whole dollar,
per 2005 PA 326.

DECEDENT ESTATES

The Probate Court has exclusive jurisdiction of matters regarding the settlement of the estate of a deceased person who was at the time of death domiciled either in the county or out of state leaving an estate within the county to be administered.

Prior to April 1, 2000, decedent's estates were administered pursuant to the Revised Probate Code (RPC). That changed on April 1, 2000, with the adoption of the Estates and Protective Individual's Code (EPIC), which now governs the administration of the estates of deceased individuals.

GUARDIANS OF LEGALLY INCAPACITATED INDIVIDUALS

The court may appoint a guardian if it finds by clear and convincing evidence both that the individual for whom a guardian is sought is an incapacitated individual and that the appointment is necessary as a means of providing continuing care and supervision of the incapacitated individual. These cases are reviewed after the first year that a guardian is appointed and every three years thereafter. These on site reviews are conducted by a guardian ad litem. The court also reviews the annual report on condition of ward that is filed by the guardian each year. As questions or concerns arise, the guardian ad litem will investigate.

GUARDIANS OF MINORS

The court may appoint a guardian for a minor if the parental rights of both parents or the surviving parent are terminated or suspended. Parental rights may be terminated or suspended by prior court order, by judgment of divorce or separate maintenance, by death, by judicial determination of mental incompetency, by disappearance, or by confinement in a place of detention; or if the parents permit the minor to reside with another person and do not provide legal authority for the other person for the minor's care and maintenance, or the minor's biological parents have never been married to

one another and the minor's parent who has custody dies or is missing and the other parent has not been granted legal custody and the proposed guardian is related to the minor within the fifth degree. An investigation is completed by a guardian ad litem or Michigan Department of Human Services workers for each minor guardianship. These cases are required to be reviewed by statute every year while the minor is under six years of age.

GUARDIANS OF INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

The court may appoint a guardian for individuals with developmental disability only as is necessary to promote and protect the well-being of the individual, including protection from neglect, exploitation, and abuse; shall take into account the individual's abilities; shall be designed to encourage the development of maximum self-reliance and independence in the individual; and shall be ordered only to the extent necessitated by the individual's actual mental and adaptive behavior. The court also reviews all annual reports that are filed by the guardians. The guardian ad litem of the court will investigate as questions or concerns arise.

CONSERVATORS

The court may appoint a conservator for an individual if the court determines that the individual is unable to manage property and business affairs effectively for reasons of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance and the individual has property that will be wasted or dissipated unless proper management is provided, or money is needed for the individual's support, care and welfare or for those entitled to the individual's support, and that protection is necessary to obtain or provide money. The court may also appoint a conservator for an individual who is mentally competent but due to age or physical infirmity is unable to manage his or her property and affairs effectively or for a minor who owns money or property that requires management. Annual accounts are required to be filed in all conservatorships unless the assets are in a restricted account. A verification of funds on deposit is to be filed each year for assets in restricted accounts, which enables the court to verify assets.

MENTAL COMMITMENTS

Proceedings under the Mental Health Code, including involuntary hospitalization of minors and adults with a mental illness and judicial admissions of individuals with developmental disabilities. The basis for the ability of the Court to order involuntary hospitalization is outlined in the Mental Health Code along with court rules. The treatment of the person could take place in a public institution or private hospital or in the community in an alternative treatment program.

CONSERVATORSHIPS OF MINORS

When is a conservatorship necessary?

1. When the minor owns money or property that requires management or protection that cannot otherwise be provided, or
2. When the minor has or may have business affairs that may be jeopardized or prevented by minority, or
3. When the minor needs money for support and education and that protection is necessary or desirable to obtain or provide money.

Who may file the petition?

1. Individual interested in the person's estate, affairs, or welfare.

Where do you file the petition?

1. In the court at the place in this state where the individual to be protected resides whether or not a guardian has been appointed in another place.
2. If the individual to be protected does not reside in this state, in the court at a place where property of the individual is located.

Who are the interested persons?

1. The individual to be protected if 14 years of age or older; and
2. The presumptive heirs of the individual to be protected; and
3. If known, a person named as attorney in fact under a durable power of attorney; and
4. The nominated conservator; and
5. A governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending.

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; and
6. A person who filed a demand for notice.

Who prepares the *Notice Of Hearing*?

1. 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 and date, the place, and the nature of the hearing.

What must be included in the *Proof of Service*?

1. The *Proof of Service* (Form PC564) 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?

1. The Notice on *Petition for Conservator or Protective Order* (PC668) 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 nominate a conservator.

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

1. The *Waiver/Consent* (Form PC561) 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 Conservator or Protective Order* (Form PC639)
2. Contents - The petition shall contain specific examples of the individual's recent conduct that demonstrates the need for a conservator's appointment.

What does the Court do upon the filing of a *Petition For Appointment of Conservator or Protective Order*?

1. Set a hearing date.
2. Appoint a guardian ad litem to represent the individual who is the subject of the petition unless he/she has legal counsel of his/her own choice.
3. If necessary, the court may order that the individual who is the subject of the petition 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 that a basis for a conservator's appointment or other protective order is established by clear and convincing evidence.

GENERAL INFORMATION

A. FIDUCIARY: Conservators are particular types of "fiduciaries". The word "fiduciary" is a derivative from the Latin word "fides" meaning faith, honesty or honor. A fiduciary is one appointed by the Court or by a legal document such as a will, trust or power of attorney, who has a duty to act primarily for the benefit of another. In a minor conservatorship, the minor may also be referred to as the "protected individual".

C. ESTATES OF MINORS: When a child receives a large sum of money, whether from a personal injury case or inheritance, the Court normally appoints a parent to be the conservator of the child's estate. This is not the family's money or the parent's money. **It is the child's money.** Parents, by law, have the obligation to support their child from their own funds, and parents may not reimburse themselves for money spent on supporting that child, or use the child's funds as a source for "loans". The money, plus accrued interest, must remain on deposit or invested in an appropriate licensed institution until the child reaches age of majority. The only possible exception to this rule is that a conservator may petition the Court to use the money for the benefit of the child when necessary and when no other source is available. Parents who violate fiduciary duties toward their child's estate may be subject to severe action by the Court.

D. VERIFICATION OF FUNDS ON DEPOSIT: If there are assets in the minor's estate, the conservator must deposit them in a suitable financial institution and file Verification of Funds on Deposit within five days from the date on the *Letters of Conservatorship*. This form, signed by an agent of the financial institution, serves two purposes: It verifies that the minor's assets have actually been deposited and it reflects that actual notice of the restricted nature of the account has been given to

the financial institution. A restricted account is used to protect the assets instead of requiring the conservator to purchase a bond, which would be an additional expense to the minor's estate. If, however, there are no assets when the conservatorship is established, the attorney for the conservator must complete the Agreement In Regard To Use Of Verification Of Deposit to insure that the assets will be deposited and Verification of Funds on Deposit filed with the Court within five days after the assets are received.

E. *Inventory*: The *Inventory* (Form PC577) is a list of the assets in the conservatorship. A conservator of a minor's estate must file an *Inventory* within 56 days from the date on the *Letters of Conservatorship*. **NOTE:** Property the protected person owns jointly or in common with others must be listed on the *Inventory* along with the type of ownership.

F. ACCOUNTS/VERIFICATIONS: In **minor** conservatorships the assets are normally placed in restricted accounts. This usually relieves the conservator of the burden of accounting to the Court until the minor turns 18. The Court does require a Verification of Funds on Deposit, along with a current account summary or monthly statement from the financial institution, to be filed each year. A reminder will be sent to the fiduciary along with the appropriate form to be completed and filed with the Court.

G. FINAL ACCOUNTS: When the minor turns 18 the conservator must file a Minor Conservator - Final Account, Waiver, Consent and Order (Form PC648). The Final Account shows all receipts, disbursements, during the accounting period. It will also show the property remaining in the hands of the fiduciary at the end of the accounting period, together with the form of such property. The Waiver and Consent portion of the form is signed by the minor and indicates that the minor has seen the Final Account and consents to the allowance of the account without hearing. The order allows the Final Account and authorizes the financial institution to turn over the assets to the ward. Upon filing a Receipt of Ward and Discharge (Form PC649) signed by the ward, the conservator will normally be discharged.

H. STANDARDS OF CONDUCT: Fiduciaries are held to the strictest standards of conduct in regard to estates. If you have a question on whether your proposed action in an estate is lawful, you are advised to contact an attorney for legal advice.

I. FILING ON TIME: You have a strict obligation to file required documents on time. Failure to do so can result in your removal as a fiduciary.

J. COMMINGLING OF FUNDS: A fiduciary is absolutely forbidden from combining his or her own funds or properties together with the ward's assets. The most common violation here is creation of joint accounts. **Warning: If accounts are already joint at the time of your appointment, you should seek legal advice before you make any change.**

K. NEGLIGENCE IN HANDLING THE ESTATE: A fiduciary must handle the assets of the estate with the greatest care. A fiduciary can be held personally liable for failure in this duty.

L. LOSS THROUGH SELF-DEALING: A fiduciary must not transact deals where the fiduciaries own self-interest is opposed to his or her duty to the estate.

M. WANTON AND WILLFUL MISHANDLING: A fiduciary may not purposely use the estate in a manner that is against the interest of the estate.

N. BORROWING: A fiduciary may not borrow or purposely use funds or properties from the estate for the fiduciaries own purpose.

O. TAX RETURNS: The estate might be required to file certain tax returns. It is the fiduciary's duty to file these returns. Therefore, as soon as you are appointed and regularly thereafter, you should determine whether or not you must file tax returns.

P. PRUDENT INVESTOR RULE: A fiduciary shall invest and manage assets needed in a fiduciary capacity as a prudent investor would, taking into account the purposes, terms, distribution requirements expressed in writing and other circumstances of the fiduciary estate. It is important that the fiduciary become familiar with all the aspects of the prudent investor rule.

700.1501 Short title; definitions

Sec. 1501

(1) This part shall be known and may be cited as the "Michigan prudent investor rule". This part prescribes the Michigan prudent investor rule.

(2) As used in this part:

(a) "Governing instrument" includes, but is not limited to, a court order.

(b) "Portfolio" means all property of every kind and character held by a fiduciary on behalf of a fiduciary estate.

700.1502 Prudent investor rule

Sec. 1502.

(1) A fiduciary shall invest and manage assets held in a fiduciary capacity as a prudent investor would, taking into account the purposes, terms, distribution requirements expressed in the governing instrument, and other circumstances of the fiduciary estate. To satisfy this standard, the fiduciary must exercise reasonable care, skill, and caution.

(2) The Michigan prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by the provisions of the governing instrument. A fiduciary is not liable to a beneficiary to the extent that the fiduciary acted in reasonable reliance on the provisions of the governing instrument.

700.1503 Portfolio strategy; risk and return objectives

Sec. 1503.

(1) A fiduciary's investment and management decisions with respect to individual assets shall be evaluated not in isolation, but rather in the context of the fiduciary estate portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fiduciary estate.

(2) Among circumstances that a fiduciary must consider in investing and managing fiduciary assets are all of the following that are relevant to the fiduciary estate or its beneficiaries:

- (a) General economic conditions.
- (b) The possible effect of inflation or deflation.
- (c) The expected tax consequences of an investment decision or strategy.
- (d) The role that each investment or course of action plays within the overall portfolio, which may include financial assets, interests in closely-held enterprises, tangible and intangible personal property, and real property.
- (e) The expected total return from income and the appreciation of capital.
- (f) Other resources of the beneficiaries.
- (g) The need for liquidity, regularity of income, and preservation or appreciation of capital.
- (h) An asset's special relationship or special value, if any, to the purposes of the fiduciary estate or to 1 or more of the beneficiaries.

(3) A fiduciary shall make a reasonable effort to verify facts relevant to the investment and management of fiduciary assets.

(4) A fiduciary may invest in any kind of property or type of investment consistent with the standards of the Michigan prudent investor rule. A particular investment is not inherently prudent or imprudent.

(5) A fiduciary who has special skill or expertise, or is named fiduciary in reliance upon the fiduciary's representation that the fiduciary has special skill or expertise, has a duty to use that special skill or expertise.

700.1504 Diversification

Sec. 1504.

A fiduciary shall diversify the investments of a fiduciary estate unless the fiduciary reasonably determines that, because of special circumstances, the purposes of the fiduciary estate are better served without diversifying.

700.1505 Duties at inception

Sec. 1505.

Within a reasonable time after accepting appointment as a fiduciary or receiving fiduciary assets, a fiduciary shall review the assets, and make and implement decisions concerning the retention and disposition of assets, in order to bring the fiduciary portfolio into compliance with the purposes, terms, distribution requirements expressed in the governing instrument, and other circumstances of the fiduciary estate, and with the requirements of the Michigan prudent investor rule.

700.1506 Loyalty

Sec. 1506.

A fiduciary shall invest and manage fiduciary assets solely in the interest of the beneficiaries.

700.1507 Impartiality

Sec. 1507.

If a fiduciary estate has 2 or more beneficiaries, the fiduciary shall act impartially in investing and managing the fiduciary assets, and shall take into account any differing interests of the beneficiaries.

700.1508 Investment costs

Sec. 1508.

In investing and managing fiduciary assets, a fiduciary may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the fiduciary estate, and the skills of the fiduciary.

700.1509 Reviewing compliance

Sec. 1509.

Compliance with the prudent investor rule is determined in light of the facts and circumstances that exist at the time of a fiduciary's decision or action, and not by hindsight. The prudent investor rule requires a standard of conduct, not outcome or performance.

700.1510 Delegation of investment and management functions

Sec. 1510.

(1) A fiduciary may delegate investment and management functions provided that the fiduciary exercises reasonable care, skill, and caution in all of the following:

- (a) Selecting an agent.
- (b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the governing instrument.
- (c) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(2) A fiduciary that complies with the requirements of subsection (1) is not liable to the beneficiaries or to the fiduciary estate for a decision or action of the agent to whom the function was delegated.

(3) In performing a delegated function, an agent owes a duty to the fiduciary estate to exercise reasonable care to comply with the terms of the delegation. If an agent accepts the delegation of a fiduciary function from a fiduciary that is subject to the laws of this state, the agent submits to the jurisdiction of this state's court.

700.1511 Language invoking standard of prudent investor rule

Sec. 1511.

The following terms or similar language in a governing instrument, unless otherwise limited or modified, authorize any investment or strategy permitted under the Michigan prudent investor rule:

- (a) "Investments permissible by law for investment of trust funds".
- (b) "Legal Investments".
- (c) "Authorized investments".
- (d) "Using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital".
- (e) "Prudent man rule".
- (f) "Prudent trustee rule".
- (g) "Prudent person rule".
- (h) "Prudent investor rule".

750.1512 Application to existing fiduciary estates

Sec. 1512.

The Michigan prudent investor rule applies to a fiduciary estate that exists on or is created after this act's effective date. As applied to a fiduciary estate that exists on this act's effective date, the Michigan prudent investor rule governs only a decision or action that occurs after that date.

Q. OTHER DUTIES: These are other duties of a fiduciary, which are imposed on you when you accept this important trust. This information is not intended to advise you of your complete responsibility as a fiduciary. **You should consult with your attorney or, if not represented by an attorney, take it upon yourself to become fully aware of your responsibility as fiduciary.**

NOTE: A FIDUCIARY MUST KEEP THE COURT AND INTERESTED PERSONS INFORMED IN WRITING WITHIN 7 DAYS OF ANY CHANGE IN THE FIDUCIARY'S ADDRESS.

POLICY REGARDING EXPENDITURE OF FUNDS IN CONSERVATORSHIPS OF MINORS (Form PC586)

A. COURT POLICY: This Court strictly follows the policy that it is the legal responsibility of the Conservator to preserve the minor's money until the minor attains age 18 and to only spend money for the child's necessities if the Conservator could not otherwise obtain through parents or spend as a parent. This policy applies to using and investing money in restricted bank accounts or securities guaranteed by the federal government as stated on the restrictions on the *Letters of Conservatorship*. There always must be approval of annual accounts of Conservatorship where unrestricted monies are involved.

B. REQUEST FOR FUNDS: The Court will only sign orders to withdraw restricted funds and accumulated interest and dividends in conformance with this written policy. It is the Conservator's responsibility to only spend money in accordance with this policy and ask for Orders for any exceptions.

1. No expenditure will be allowed unless it directly benefits the child.
2. No expenditure will be allowed if the expenditure relieves a parental obligation that could otherwise be met.
3. Exceptions include unusual circumstances, which create an exceptional burden on the family such as very large medical or educational expenses. All such exceptions of restricted funds require a Court Order.
4. Before exceptions are approved, evidence must be presented that the parent cannot otherwise provide the benefit. Receipts for expenditures allowed will be required within a specified period of time of a Court Order allowing use or withdrawal of money from a restricted account.
5. Expenditures regarding maintenance of the principal in a child's account will be allowed. An example of such a situation would be tax return preparation and taxes payable on the interest income or dividends from such principal.
6. No money will be released to the Department of Human Services (DHS) or any other agency, for obligations that are the parents' and not the child's.

C. DOCUMENTS REQUIRED: The procedure to get a Court Order is to see if the expenditure follows the exceptions, then obtain an estimate of the expense. Then the amount with documentation shall be presented to the Court with a written request with full explanation. A hearing may be required if the Court needs further explanation.

CONSERVATORSHIPS OF ADULTS

When is a conservatorship necessary?

1. Appointment can be requested by the individual to be protected.
 - a. When an individual because of age or physical infirmity is unable to manage his/her property and affairs effectively.
2. Appointment can be requested by another individual.
 - a. When the individual is unable to manage his/her property and affairs effectively by reasons such as: mental illness, mental incompetency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, and disappearance; and
 - b. The individual has property which will be wasted or dissipated unless proper management is provided; or
 - c. Money is needed for support, care, and welfare of the individual or those entitled to be supported by the individual; and
 - i. Protection is necessary or desirable to obtain or provide money.

Who may file the petition?

1. An individual mentally competent but due to physical infirmity needs a conservator.
2. An Individual interested in the person's estate, affairs, or welfare.

Where do you file the petition?

1. In the court at the place in this state where the individual to be protected resides whether or not a guardian has been appointed in another place.
2. If the individual to be protected does not reside in this state, in the court at a place where property of the individual is located.

Who are the interested persons?

1. The individual to be protected if 14 years of age or older; and
2. The presumptive heirs of the individual to be protected; and
3. If known, a person named as attorney in fact under a durable power of attorney; and
4. The nominated conservator; and
5. A governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending.

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?

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

What must be included in the proof of service?

1. The *Proof of Service* 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?

1. The *Notice on Petition for Conservator or Protective Order* 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 nominate a conservator.

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

1. The *Waiver/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 Conservator or Protective Order*
2. Contents - The petition shall contain specific examples of the individual's recent conduct that demonstrates the need for a conservator's appointment.

What does the Court do upon the filing of a *Petition For Appointment of Conservator or Protective Order*?

1. Set a hearing date.
2. Appoint a guardian ad litem to represent the individual who is the subject of the petition unless he/she has legal counsel of his/her own choice.
3. If necessary, the court may order that the individual who is the subject of the petition 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 that a basis for a conservator's appointment or other protective order is established by clear and convincing evidence.

GENERAL INFORMATION

- A. Fiduciary** - Conservators are particular types of "fiduciaries." The word "fiduciary" is a derivative from the Latin word "fides" meaning faith, honest or honor. A fiduciary is one appointed who has a duty to act primarily for the benefit of another. The individual who is protected is called the "protected individual."
- B. Inventory** - The *Inventory (Conservatorship)* is a list of the assets in an estate. A conservator (guardian of the estate) must file an *Inventory (Conservatorship)* within 56 days from the date of the *Letters of Conservatorship*. **NOTE:** Property the protected person owns jointly or in common with others must be listed on the *Inventory (Conservatorship)* along with the type of ownership.
- C. Accounts** - A conservator must make a complete itemized *Account of Fiduciary* of the administration of the estate to the Court at least once every year. The accounting must show all receipts, disbursements, and sales of property during the accounting period. It will also show the property remaining in the hands of the fiduciary at the end of the accounting period, together with the form of such property. It must also have attached a current account summary or monthly statement from the financial institution. If this accounting is not received by the Court each year, within 56 days following the anniversary date of the appointment, the fiduciary is considered delinquent and subject to serious Court action. The "anniversary date" is the month and day the Judge signed the *Letters of Conservatorship*.
- D. Final Accounts** - When the estate is ready for closing, the conservator must file a *Final Account* and an itemized and complete list of all of the remaining property.

- E. Notice** - A *Notice of Hearing* and copies of the *Inventory (Conservatorship) and Account(s)* must be sent to all interested persons, with the original to be filed with the Court, along with a *Proof of Service*. The "interested persons" are defined by Court rule and include: 1) the protected individual or ward, if 14 years of age or older and can be located; 2) the presumptive heirs of the protected individual; 3) claimants; and 4) additional interested persons required by law or court rule.
- F. Standards of Conduct** - Fiduciaries are held to the strictest standards of conduct in regard to estates. If you have a question on whether your proposed action in an estate is lawful, you are advised to contact an attorney for legal advice.
- G. Filing on Time** - You have a strict obligation to file reports, inventories and accountings on time. Failure to do so can result in your removal as a fiduciary and subject you to a contempt of court action.
- H. Commingling of Funds** - A fiduciary is absolutely forbidden from commingling his or her own funds or properties together with the ward's assets. The most common violation here is creation of joint accounts.
WARNING: If accounts are already joint at the time of your appointment, you should seek legal advice before you make any change.
- I. Negligence in Handling the Estate** - A fiduciary must handle the assets of the estate with the greatest care. A fiduciary can be held personally liable for failure in this duty. For example: If the fiduciary forgets to pay the insurance and the house burns down, the Court may hold the fiduciary liable for the loss.
- J. Loss Through Self-Dealing** - A fiduciary must not transact deals where the fiduciary's own self-interest is opposed to his or her duty to the estate.
- K. Wanton and Willful Mishandling** - A fiduciary may not purposely use the estate in a manner that is against the interest of the estate.
- L. Borrowing** - A fiduciary may not borrow or use funds of properties from the estate for the fiduciary's own purposes.
- M. Tax Returns** - The estate might be required to file certain tax returns. It is the fiduciary's duty to file these returns. Therefore, as soon as you are appointed and regularly thereafter, you should determine whether or not you must file tax returns.
- N. Pre-Notice Cards:** As a reminder, in conservatorships a pre-notice postcard will be sent to the fiduciary the month prior to the due date of the account along with the appropriate form to be completed and filed with the Court.
- O. Prudent Investor Rule** - A fiduciary shall invest and manage assets needed in a fiduciary capacity as a prudent investor would, taking into account the purposes, terms, distribution requirements expressed in writing and other circumstances of the fiduciary estate. It is important that the fiduciary become familiar with all the aspects of the prudent investor rule.

700.1501 Short title; definitions.

Sec. 1501.

1. This part shall be known and may be cited as the "Michigan prudent investor rule". This part prescribes the Michigan prudent investor rule.
2. As used in this part:
 - a. "Governing instrument" includes, but is not limited to, a court order.
 - b. "Portfolio" means all property of every kind and character held by a fiduciary on behalf of a fiduciary estate.

700.1502 Prudent investor rule.

Sec. 1502.

3. A fiduciary shall invest and manage assets held in a fiduciary capacity as a prudent investor would, taking into account the purposes, terms, distribution requirements expressed in the governing instrument, and other circumstances of the fiduciary estate. To satisfy this standard, the fiduciary must exercise reasonable care, skill, and caution.
4. The Michigan prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by the provisions of the governing instrument. A fiduciary is not liable to a beneficiary to the extent that the fiduciary acted in reasonable reliance on the provisions of the governing instrument.

700.1503 Portfolio strategy; risk and return objectives.

Sec. 1503.

5. A fiduciary's investment and management decisions with respect to individual assets shall be evaluated not in isolation, but rather in the context of the fiduciary estate portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fiduciary estate.
6. Among circumstances that a fiduciary must consider in investing and managing fiduciary assets are all of the following that are relevant to the fiduciary estate or its beneficiaries:
 - a. General economic conditions.
 - b. The possible effect of inflation or deflation.
 - c. The expected tax consequences of an investment decision or strategy.
 - d. The role that each investment or course of action plays within the overall portfolio, which may include financial assets, interests in closely-held enterprises, tangible and intangible personal property, and real property.
 - e. The expected total return from income and the appreciation of capital.
 - f. Other resources of the beneficiaries.
 - g. The need for liquidity, regularity of income, and preservation or appreciation of capital.

- h. An asset's special relationship or special value, if any, to the purposes of the fiduciary estate or to 1 or more of the beneficiaries.
7. A fiduciary shall make a reasonable effort to verify facts relevant to the investment and management of fiduciary assets.
8. A fiduciary may invest in any kind of property or type of investment consistent with the standards of the Michigan prudent investor rule. A particular investment is not inherently prudent or imprudent.
9. A fiduciary who has special skill or expertise, or is named fiduciary in reliance upon the fiduciary's representation that the fiduciary has special skill or expertise, has a duty to use that special skill or expertise.

700.1504 Diversification.

Sec. 1504. A fiduciary shall diversify the investments of a fiduciary estate unless the fiduciary reasonably determines that, because of special circumstances, the purposes of the fiduciary estate are better served without diversifying.

700.1505 Duties at inception.

Sec. 1505. Within a reasonable time after accepting appointment as a fiduciary or receiving fiduciary assets, a fiduciary shall review the assets, and make and implement decisions concerning the retention and disposition of assets, in order to bring the fiduciary portfolio into compliance with the purposes, terms, distribution requirements expressed in the governing instrument, and other circumstances of the fiduciary estate, and with the requirements of the Michigan prudent investor rule.

700.1506 Loyalty.

Sec. 1506. A fiduciary shall invest and manage fiduciary assets solely in the interest of the beneficiaries.

700.1507 Impartiality.

Sec. 1507. If a fiduciary estate has 2 or more beneficiaries, the fiduciary shall act impartially in investing and managing the fiduciary assets, and shall take into account any differing interests of the beneficiaries.

700.1508 Investment costs.

Sec. 1508. In investing and managing fiduciary assets, a fiduciary may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the fiduciary estate, and the skills of the fiduciary.

700.1509 Reviewing compliance.

Sec. 1509. Compliance with the prudent investor rule is determined in light of the facts and circumstances that exist at the time of a fiduciary's decision

or action, and not by hindsight. The prudent investor rule requires a standard of conduct, not outcome or performance.

700.1510 Delegation of investment and management functions.

Sec. 1510.

10. A fiduciary may delegate investment and management functions provided that the fiduciary exercises reasonable care, skill, and caution in all of the following:
 - a. Selecting an agent.
 - b. Establishing the scope and terms of the delegation, consistent with the purposes and terms of the governing instrument.
 - c. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.
11. A fiduciary that complies with the requirements of subsection (1) is not liable to the beneficiaries or to the fiduciary estate for a decision or action of the agent to whom the function was delegated.
12. In performing a delegated function, an agent owes a duty to the fiduciary estate to exercise reasonable care to comply with the terms of the delegation. If an agent accepts the delegation of a fiduciary function from a fiduciary that is subject to the laws of this state, the agent submits to the jurisdiction of this state's court.

700.1511 Language invoking standard of prudent investor rule.

Sec. 1511. The following terms or similar language in a governing instrument, unless otherwise limited or modified, authorize any investment or strategy permitted under the Michigan prudent investor rule:

- m. "Investments permissible by law for investment of trust funds".
- n. "Legal investments"
- o. "Authorized investments".
- p. "Using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their fund, considering the probable safety of their capital".
- q. "Prudent man rule".
- r. "Prudent trustee rule".
- s. "Prudent person rule".
- t. "Prudent investor rule".

750.1512 Application to existing fiduciary estates.

Sec. 1512. The Michigan prudent investor rule applies to a fiduciary estate that exists on or is created after this act's effective date. As applied to a fiduciary estate that exists on this act's effective date, the Michigan prudent investor rule governs only a decision or action that occurs after that date.

Other Duties - There are other duties of a fiduciary which are imposed on you when you accept this important trust. This information is not intended to advise you of your complete responsibility as fiduciary. **You should consult with your attorney, or, if not represented by an attorney, take it upon yourself to become fully aware of your responsibility as a fiduciary.**

DECEDENT'S ESTATES - UNSUPERVISED ADMINISTRATION

Informal Proceedings ("Application")

Informal proceedings are commenced by filing an *Application for Informal Probate and/or Appointment of Personal Representative (Testate/Intestate)* (Form PC558) and other related papers. The Application is for the Probate Register to admit the original will, if any, to probate and/or appoint a personal representative. If the Application is granted, the Register will sign a form called *Register's Statement* (Form PC568) admitting the will and/or appointing a personal representative. An appointed personal representative becomes qualified to act by filing an *Acceptance of Appointment* (Form PC571) and any required bond. The personal representative will proceed with unsupervised administration until the estate is closed (unless the judge orders that the estate becomes "supervised" following a petition requesting supervised administration).

Forms needed to open a file by "Application"

PC 558 PC 565 PC 566*

PC 557* PC 564* PC 567*

PC 568 PC 570 PC 571

PC572

Plus \$150.00 filing fee

Formal Proceedings ("Petition")

Formal proceedings are commenced by filing a *Petition for Probate and/or Appointment of Personal Representative (Testate/Intestate)* (Form PC559) and other related papers. After either a court hearing with proper notice to all interested persons or upon full waiver and consent, the probate judge may enter an order called an Order of Formal Proceedings (Form PC569). This order may admit a will, determine the heirs of the deceased and appoint a personal representative. Once the order is entered, the personal representative qualifies to act by filing an *Acceptance of Appointment* (Form PC571) and any required bond. The personal representative will proceed with unsupervised administration until the estate is ready to be closed. A

petition for a formal proceeding on any aspect of administration may be filed at any point. A judge then enters any applicable orders after either a court hearing with proper notice or upon filing of full waivers and consents.

Forms needed to open a file by "Petition"

PC 559 PC 565 PC 561* PC 564*

PC 566* PC 569 PC 470*

PC 571 PC 572 PC 562*

Plus \$150.00 filing fee

NOTE: The Presque Isle County Probate Court is prohibited from giving legal advice on any of the above proceedings. You should always consult with an attorney if you have any questions about the administration of a decedent estate. MCL 700.1211

*** These forms or additional forms may or may not be needed depending on the facts of the case.**

DISPOSITION OF SMALL ESTATES

Wearing Apparel and Cash of \$500 or less. MCL 700.3981

1. Decedent wearing apparel and cash of \$500.00 or less may be transferred to a decedent's spouse, child or parent without court approval or intervention.
2. Who may transfer?
 - a. Hospital
 - b. Convalescent or nursing home
 - c. Morgue
 - d. Law enforcement agency
3. What is required?
 - a. Proof of identity of spouse, child or parent.
 - b. Sworn statement for verification of relationship.
 - c. Sworn statement that there is no application or petition pending for estate administration.
4. The transferor is released to the same extent as if delivery were made to a legally qualified personal representative. The person receiving the decedent's property is answerable to a person with a prior right and accountable to personal representative of the decedent's estate appointed after the transfer.

Money due from Decedent's Employer for Wages and Fringe Benefits. MLC 408.480

1. Money from wages or fringe benefits may be transferred without court intervention if there is no other property for which probate court estate administration is required.
2. Who may receive payment?
 - a. Fringe benefits are payable as designated by the terms of the employer's contract, policy or plan.
 - b. Wages and fringe benefits are payable to the person(s) designated in a statement signed by the employee and filed with the employer before the employee's death.
 - c. Any wages and fringe benefits not covered by #1 or #2 shall be payable to the employee's survivors according to the following priority:
 - i. Spouse
 - ii. Children
 - iii. Mother or father
 - iv. Sister or brother
 - d. Payment will be a full discharge and release of the employer from the wages and fringe benefits due and owing the deceased employee.

Transfer by Affidavit. MCL 700.3893

1. An estate consisting of entirely personal property may qualify for this procedure. Twenty-eight days or more after the decedent's death, a person holding the decedent's property must deliver it to the decedent's successor when the successor presents the death certificate and a sworn statement using Affidavit of Decedent's Successor for Delivery of Certain Assets Owned by Decedent (Form PC598), which must state that:
 - a. The estate does not include property;
 - b. 28 days have passed since the decedent's death;
 - c. An application or petition for appointment of personal representative is not pending or has not been granted;
 - d. The successor is entitled to the payment or delivery of the property;
 - e. The name and address of any other person that is entitled to a share of the property;
 - f. The estate value, less liens and encumbrances, does not exceed the following:

Date of Death	Amount
If the decedent passed away before January 1, 2001	\$15,000.00
If the decedent passed away in 2001	\$16,000.00
If the decedent passed away in 2002 or 2004	\$17,000.00

If the decedent passed away in 2005 or 2006	\$18,000.00
If the decedent passed away in 2007 or 2008	\$19,000.00
If the decedent passed away in 2009 or 2010	\$20,000.00

LAST WILL AND TESTAMENT AND/OR CODICIL

Depositing your Original Last Will and Testament and/or Codicil with the Probate Court

1. Presque Isle County residents may deposit their Last Will and Testament and/or Codicil at the Presque Isle County Probate Court.
2. Your Last Will and Testament and/or Codicil may be deposited by you or someone under your direction.
3. Your Last Will and Testament and/or Codicil should be placed into a sealed envelope with the following information on the outside:
 - a. Your name, address and last four digits of your social security number and your Michigan drivers license number.
 - b. Date delivered.
 - c. Your Last Will and Testament and/or Codicil envelope will be stamped "filed," dated and initialed by the clerk.
4. There is a \$25.00 filing fee to deposit the Last Will and Testament and/or Codicil.
5. You will be given receipts for the deposit of the will and filing fee.

Retrieval of a Last Will and Testament and/or Codicil

During your lifetime, you may retrieve your Last Will and Testament and/or Codicil at anytime at no charge. However, there is a \$25.00 filing fee each time your Last Will and Testament and/or Codicil is re-deposited.

1. In person:

To retrieve your Last Will and Testament and/or Codicil, you must present your name, and personal identification, either your driver's license or state ID card.

2. By another person:

(a) If you are unable to present yourself personally to the Court, you may request your Last Will and Testament and/or Codicil, by completing the Authorization to Release Will held for Safekeeping (Form PC548). Your

designee shall present the Authorization form to the Court; present personal identification, by either their driver's license or state ID card before your Last Will and Testament and/or Codicil will be released.

3. By mail:

(a) You may request your Last Will and Testament and/or Codicil, by completing the Authorization to Release Will Held for Safekeeping, (Form PC548) and mailing it to the Court.

(b) To receive your Last Will and Testament and/or Codicil by mail you will have to include a check or money order payable to the Presque Isle County Probate Court in the amount of \$5.00. Your Last Will and Testament and/or Codicil will then be mailed to you by certified mail, return receipt requested and addressee only.

Delivery of Original Last Will and Testament and/or Codicil upon death of the testator to the Probate Court

1. Regardless of where your Last Will and Testament and/or Codicil is stored, upon death, your Last Will and Testament and/or Codicil must be delivered to the Probate Court of your county of residence.
2. If your Last Will and Testament and/or Codicil is not stored with the Court, the custodian or person having possession of the Last Will and Testament and/or Codicil must deliver it to the Probate Court with reasonable promptness upon your death.
3. A person who neglects to promptly deliver your Last Will and Testament and/or Codicil (without reasonable cause) is liable for damages.
4. A person who willfully refuses or fails to deliver your Last Will and Testament and/or Codicil after ordered by the Court to do so is guilty of contempt of Court and subject to penalty for contempt (fine or jail).

PETITION AND ORDER FOR ASSIGNMENT

A completed *Petition and Order for Assignment* (PC556) must typed or printed legibly in ink. An heir or an individual who paid for the funeral bill may petition the court.

1. An itemized funeral bill marked "Paid" which shows the amount paid and who paid it or funeral bill plus receipt from funeral home showing amount of payment and person paying. If the funeral bill is not paid, you must have a copy of the bill showing the amount due.
2. List all information about the asset that is available. For bank accounts, show the name of the bank, the account number(s), and the balance at the date of death. For stocks and bonds, show the name of the corporation, number of shares, price per share, and total value at the date of death. For autos, trucks, boats, etc., include a description and the vehicle number. For real estate, list the complete legal description, not the street address.

3. The total value of the assets on the original and any amended petitions, after payment of funeral and burial expenses, may not exceed:

Date of Death	Amount
If the decedent passed away before January 1, 2001	\$15,000.00
If the decedent passed away in 2001	\$16,000.00
If the decedent passed away in 2002 or 2004	\$17,000.00
If the decedent passed away in 2005 or 2006	\$18,000.00
If the decedent passed away in 2007 or 2008	\$19,000.00
If the decedent passed away in 2009 or 2010	\$20,000.00

4. The filing fee is \$25.00 plus a Gross Estate Fee based upon the Inventory Value of the assets before funeral expenses. Examples of the Gross Estate Fee: \$25.00 for \$1,000.00 in assets and \$68.75 for \$10,000.00 in assets. You may call the Court (989-734-3268) for the exact gross estate fee for the total amount of the estate assets listed on your petition.

PETITION AND ORDER TO OPEN SAFE DEPOSIT BOX TO LOCATE WILL OR BURIAL DEED

1. The Court may order the opening of a safe deposit box upon the filing of a *Petition and Order to Open Safe Deposit Box to Locate Will or Burial Deed* (PC551) if:
 - a. It appears that the Safe Deposit Box may contain the decedent's Last Will and Testament or deed to a burial plot.
 - b. An interested person files with the Court the *Petition and Order to Open Safe Deposit Box to Locate Will and/or Burial Deed* (Form PC551). The court cost for the filing of the *Petition and Order to Open Safe Deposit Box* is \$20.00.
 - c. An officer or other authorized employee of the financial institution where the box is located is present when the box is opened; and
 - d. If an alleged Last Will and Testament or deed to a burial plot is found in the box, the person named in the order must deliver the documents to the probate register or deputy register; and
 - e. Within seven (7) days, the *Safe Deposit Certificate and Receipt* (Form PC555) must be presented to the Probate Court. This form indicates whether or not a Last Will and Testament and/or deed to a burial plot were found and that no other items were removed from the Safe Deposit Box.

GUARDIANSHIP OF AN INDIVIDUAL WITH DEVELOPMENTAL DISABILITY

Michigan's Mental Health Code provides for the appointment of a plenary guardian of an individual if found by clear and convincing evidence that he/she is developmentally disabled and totally without capacity to care for himself or herself or his/her estate. The Mental Health Code provides for the appointment of a partial guardian if found by clear and convincing evidence that he/she is developmentally disabled and lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or his/her estate. A developmental disability is defined as either of the following:

1. An individual older than 5 years with a severe, chronic condition that meets all of the following:
 - a. Attributable to a mental or physical impairment or combination of physical and mental impairments.
 - b. Is manifest before the individual of 22 years of age.
 - c. Is likely to continue indefinitely.
 - d. Results in substantial functional limitations in 3 or more of the following areas of major life activity:
 - i. Self-care
 - ii. Receptive and expressive language
 - iii. Learning
 - iv. Mobility
 - v. Self-direction
 - vi. Capacity for independent living
 - vii. Economic self-sufficiency
 - e. Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.
2. An individual from birth to age 5, with a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in development disability as defined in (1.) if services are not provided.

What are the purposes of guardianship?

The guardianships for individuals with developmental disabilities shall be:

1. Utilized only as is necessary to promote and protect the well being of the individual, including protection from neglect, exploitation and abuse;
2. Designed to encourage the development of maximum self-reliance and independence in the individual; and
3. Ordered only to the extent necessitated by the individual's actual mental and adaptive limitations.

If the Court determines that some form of guardianship is necessary, partial guardianship shall be the preferred form of guardianship for an individual with a developmental disability.

Who may petition for appointment of a guardian?

A petition for appointment of a guardian for an individual who has been allegedly diagnosed as developmentally disabled may be filed by any interested person or entity, or by the individual. *Petition for Appointment of Guardian, Individual with Alleged Developmental Disability* (Form PC658). It may be filed at the Probate Court of the county of residence of an individual with the alleged developmental disability or with the county in which an individual with alleged developmental disability was found if a county of residence couldn't be determined. Such a petition generally needs to be filed and a guardian appointed when the individual reaches the age of majority because a parent can no longer make decisions on the individual's behalf.

The guardianship process

Northeast Michigan Community Mental Health Authority generally provide input and evaluations to determine the need for guardianship services for an adult alleged to be developmentally disabled. The family many times has had some contact with Community Mental Health, and the need for the appointment of a guardian becomes known when the individual nears the age of 18. Northeast Michigan Community Mental Health Authority at 1-800-834-3393 or locally at (989) 734-7223, assists families with questions about guardianship services for individuals with developmental disabilities by directing them to the appropriate department within Community Mental Health. Community Mental Health then arranges for and/or conducts the required evaluations and makes recommendations to the court.

The *Petition For Appointment Of Guardian, Individual with Alleged Developmental Disability* must be accompanied by a *Report to Accompany Petition to Appoint, Modify or Discharge Guardian of Individual with Developmental Disability* (Form PC659) which includes an evaluation of the mental, physical, social, educational, adaptive behavior and social skills of the person. The name and title of the person performing such evaluations and the dates performed (which must be within one year of the date of filing the petition) must be included on this report and, in addition, a list of all psychotropic medications, as well as any and all other medication that the individual is receiving on a continual basis that may or may not affect behavior.

When a petition for appointment of a guardian of an individual alleged to be developmentally disabled and the accompanying report are completed, the petitioner, who may be assisted by Community Mental Health, will bring these documents to the Presque Isle County Probate Court, 151 E. Huron Ave., P.O. Box 110, Rogers City, MI 49779. The petition and accompanying report will be reviewed for completeness and compliance with the Mental Health Code. If the report does not accompany the petition, the Court will order appropriate evaluations to be performed by qualified persons who may be employees of the state, the county, Northeast Michigan Community Mental Health Authority, or the Court. A date for hearing on the petition will be scheduled within 30 days from the date of filing the petition. The Court will appoint legal counsel for the respondent to represent the best interests of the individual. Unless the petitioner is represented by private counsel, the Court, or petitioner at the direction of the Court, will prepare the necessary legal documents

and notices, and cause them to be served on interested persons. An individual with an alleged developmental disability in guardianship proceedings has the right to:

1. A jury trial;
2. Present evidence and to confront and cross-examine witnesses;
3. A closed hearing;
4. To present at all proceedings; and
5. To secure an independent evaluation at his/her own expense, or at the expense of the state if the alleged individual with developmental disability is indigent.

The court appointed attorney will visit with the individual with alleged developmental disability and make a report to the Court, either in writing or in person on the day of hearing. A *Notice of Right to Request Dismissal of Guardian or Modification of Guardianship Order* (Form PC661) is served on the ward, usually by the attorney. This notice informs the ward about his/her rights regarding future requests for modifications or the dismissal of the guardianship.

If the Court, after a full hearing and testimony, determines that a guardian is required, the appointment will then be made. The guardian must provide an *Acceptance of Appointment* (Form PC571) or bond, so *Letters of Guardianship of Individual with Developmental Disability* (Form PC662) can be issued. A guardian appointed by the Court shall not have the power, unless specified by Court order, to place an individual with developmental disability in a facility.

It is a good idea to nominate a standby guardian at the time of filing the petition. The Court can make a determination during the hearing and appoint the standby guardian, who would then also file an *Acceptance of Appointment* (Form PC571). In case of emergency and the guardian is unable to act, the standby guardian is then in place to make important decisions concerning the ward.

Who may be appointed guardian?

The Court may appoint as guardian for an individual with a developmental disability any suitable individual or agency, public or private, including a private association capable of conducting an active guardianship program for an individual with a developmental disability. The Court shall not appoint the Department of Mental Health as guardian or any other agency, public or private, that is directly providing services to the individual with developmental disability unless no other suitable individual or agency can be found.

Before the appointment, the Court shall make a reasonable effort to question the individual concerning his or her preference regarding the person to be appointed as guardian, and any preference indicated shall be given due consideration.

What is the guardian's responsibility after appointment?

To the extent ordered by the Court, the guardian has the following duties:

1. Custody of the ward;

2. Make provisions from the ward's estate or other sources for the ward's care, comfort and maintenance;
3. The duty to make a reasonable effort to secure for the ward training, education, medical and psychological services, and social and vocational opportunities that are appropriate and as will assist the ward in the development of maximum self-reliance and independence;
4. Within 63 days of the appointment, the plenary guardian of the estate must:
 - a) file with the Court a complete *Inventory* (Form PC577) of the ward's assets; b) provide the ward with a copy of the *Inventory*; c) provide the ward's presumptive heirs with a copy of the *Inventory*; and d) provide the parent or guardian with whom the individual resides a copy of the *Inventory* (MCR 5.409);
5. The guardian of the individual, plenary or partial, shall file with the Court at intervals ordered by the Court, but not less often than annually on the anniversary date of appointment, a report which shall contain statements about the ward's current mental, physical and social condition, living arrangements, treatment programs, medical, educational, vocational and other professional services given to the ward, and also a list of the guardian's visits with and on behalf of the ward. The *Report of Guardian on Condition of Individual with Developmental Disability* (Form PC663) and a booklet concerning their preparation are available at the Probate Court office by calling (989) 734-3268.

When may a guardian be discharged or have his/her duties modified?

A guardian for an individual with developmental disabilities may be discharged or have his/her duties modified when the individual's capacity to perform the tasks necessary for the care of his/her person in the management of his/her estate have changed so as to warrant modification or discharge. The individual with developmental disability, the person's guardian, or any interested person on his/her behalf may petition the Court for a discharge or modification order. A request if made by the individual with developmental disability, may be communicated to the Court by any means, including oral communication or an informal letter. Upon receiving this communication, the Court shall appoint a suitable person to prepare and file with the Court a petition reflecting the communication. Upon receipt of this petition, the Court shall conduct a hearing.

Upon conclusion of the hearing, the Court may do any of the following:

1. Dismiss the petition;
2. Remove the guardian and dissolve the guardianship order;
3. Remove the guardian and appoint a successor;
4. Modify the original guardianship order;
- or
5. Make any other order, which the Court considers appropriate and in the interest of an individual who is developmentally disabled.

GENERAL INFORMATION

A. Fiduciary - Guardians of estates are particular types of "fiduciaries." The word "fiduciary" is a derivative from the Latin word "fides" meaning faith, honest or honor.

A fiduciary is one appointed who has a duty to act primarily for the benefit of another. The individual with developmental disabilities is called the "ward."

B. Inventory - The Inventory (Form PC577) is a list of the assets in an estate. A guardian of the estate must file an Inventory within 56 days from the date of the *Letters of Guardianship of Individual with Developmental Disability*. NOTE: Property the protected person owns jointly or in common with others must be listed on the Inventory along with the type of ownership.

C. Accounts - A guardian of the estate must make a complete itemized *Account of Fiduciary* (Form PC583 or PC584) of the administration of the estate to the Court at least once every year, or more often if directed by the Court. The accounting must show all receipts, disbursements, and sales of property during the accounting period. It will also show the property remaining in the hands of the fiduciary at the end of the accounting period, together with the form of such property. It must also have attached a current account summary or monthly statement from the financial institution. If this accounting is not received by the Court each year, within 56 days following the anniversary date of the appointment, the fiduciary is considered delinquent and subject to serious Court action. However, the Court cannot receive the accounting more than 56 days prior to the anniversary date. The "anniversary date" is the month and day the Judge signed the *Letters of Guardianship of Individual with Developmental Disability*.

D. Final Accounts - When the estate is ready for closing, the guardian of the Individual with a Developmental Disability must file a *Final Account* (Form PC 583 or PC584) and an itemized and complete list of all of the remaining property.

E. Notice - A *Notice of Hearing* (Form PC562) and copies of the *Inventory* and account(s) must be sent to all interested persons, with the original to be filed with the Court, along with a *Proof of Service* (Form PC564). The "interested persons" are defined by Court rule and include: 1) the protected individual or ward, if 14 years of age or older and can be located; 2) the presumptive heirs of the protected individual; 3) claimants; and 4) additional interested persons required by law or court rule.

F. Standards of Conduct - Fiduciaries are held to the strictest standards of conduct in regard to estates. If you have a question on whether your proposed action in an estate is lawful, you are advised to contact an attorney for legal advice.

G. Filing on Time - You have a strict obligation to file reports, inventories and accountings on time. Failure to do so can result in your removal as a fiduciary and subject you to a contempt of court action.

H. Commingling of Funds - A fiduciary is absolutely forbidden from commingling his or her own funds or properties together with the ward's assets. The most common violation here is creation of joint accounts. **WARNING:** If accounts are already joint at the time of your appointment, you should seek legal advice before you make any change.

I. Negligence in Handling the Estate - A fiduciary must handle the assets of the estate with the greatest care. A fiduciary can be held personally liable for failure in this duty. For example: If the fiduciary forgets to pay the insurance and the house

burns down, the Court may hold the fiduciary liable for the loss.

J. **Loss Through Self-Dealing** - A fiduciary must not transact deals where the fiduciary's own self-interest is opposed to his or her duty to the estate.

K. **Wanton and Willful Mishandling** - A fiduciary may not purposely use the estate in a manner which is against the interest of the estate.

L. **Borrowing** - A fiduciary may not borrow or use funds of properties from the estate for the fiduciary's own purposes.

M. **Tax Returns** - The estate might be required to file certain tax returns. It is the fiduciary's duty to file these returns. Therefore, as soon as you are appointed and regularly thereafter, you should determine whether or not you must file tax returns.

N. **Pre-Notice Cards:** As a reminder, in guardianships a pre-notice postcard will be sent to the fiduciary the month prior to the due date along with the appropriate form to be completed and filed with the Court.

O. **Prudent Investor Rule** - A fiduciary shall invest and manage assets needed in a fiduciary capacity as a prudent investor would, taking into account the purposes, terms, distribution requirements expressed in writing and other circumstances of the fiduciary estate. It is important that the fiduciary become familiar with all the aspects of the prudent investor rule.

700.1501 Short title; definitions

Sec. 1501

(1) This part shall be known and may be cited as the "Michigan prudent investor rule". This part prescribes the Michigan prudent investor rule.

(2) As used in this part:

(a) "Governing instrument" includes, but is not limited to, a court order.

(b) "Portfolio" means all property of every kind and character held by a fiduciary on behalf of a fiduciary estate.

700.1502 Prudent investor rule

Sec. 1502.

(1) A fiduciary shall invest and manage assets held in a fiduciary capacity as a prudent investor would, taking into account the purposes, terms, distribution requirements expressed in the governing instrument, and other circumstances of the fiduciary estate. To satisfy this standard, the fiduciary must exercise reasonable care, skill, and caution.

(2) The Michigan prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by the provisions of the governing instrument. A fiduciary is not liable to a beneficiary to the extent that the fiduciary acted in reasonable reliance on the provisions of the governing instrument.

700.1503 Portfolio strategy; risk and return objectives

Sec. 1503.

(1) A fiduciary's investment and management decisions with respect to individual assets shall be evaluated not in isolation, but rather in the context of the fiduciary estate portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fiduciary estate.

(2) Among circumstances that a fiduciary must consider in investing and managing fiduciary assets are all of the following that are relevant to the fiduciary estate or its beneficiaries:

- (a) General economic conditions.
- (b) The possible effect of inflation or deflation.
- (c) The expected tax consequences of an investment decision or strategy.
- (d) The role that each investment or course of action plays within the overall portfolio, which may include financial assets, interests in closely-held enterprises, tangible and intangible personal property, and real property.
- (e) The expected total return from income and the appreciation of capital.
- (f) Other resources of the beneficiaries.
- (g) The need for liquidity, regularity of income, and preservation or appreciation of capital.
- (h) An asset's special relationship or special value, if any, to the purposes of the fiduciary estate or to 1 or more of the beneficiaries.

(3) A fiduciary shall make a reasonable effort to verify facts relevant to the investment and management of fiduciary assets.

(4) A fiduciary may invest in any kind of property or type of investment consistent with the standards of the Michigan prudent investor rule. A particular investment is not inherently prudent or imprudent.

(5) A fiduciary who has special skill or expertise, or is named fiduciary in reliance upon the fiduciary's representation that the fiduciary has special skill or expertise, has a duty to use that special skill or expertise.

700.1504 Diversification

Sec. 1504.

A fiduciary shall diversify the investments of a fiduciary estate unless the fiduciary reasonably determines that, because of special circumstances, the purposes of the fiduciary estate are better served without diversifying.

700.1505 Duties at inception

Sec. 1505.

Within a reasonable time after accepting appointment as a fiduciary or receiving

fiduciary assets, a fiduciary shall review the assets, and make and implement decisions concerning the retention and disposition of assets, in order to bring the fiduciary portfolio into compliance with the purposes, terms, distribution requirements expressed in the governing instrument, and other circumstances of the fiduciary estate, and with the requirements of the Michigan prudent investor rule.

700.1506 Loyalty

Sec. 1506.

A fiduciary shall invest and manage fiduciary assets solely in the interest of the beneficiaries.

700.1507 Impartiality

Sec. 1507.

If a fiduciary estate has 2 or more beneficiaries, the fiduciary shall act impartially in investing and managing the fiduciary assets, and shall take into account any differing interests of the beneficiaries.

700.1508 Investment costs

Sec. 1508.

In investing and managing fiduciary assets, a fiduciary may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the fiduciary estate, and the skills of the fiduciary.

700.1509 Reviewing compliance

Sec. 1509.

Compliance with the prudent investor rule is determined in light of the facts and circumstances that exist at the time of a fiduciary's decision or action, and not by hindsight. The prudent investor rule requires a standard of conduct, not outcome or performance.

700.1510 Delegation of investment and management functions

Sec. 1510.

- (1) A fiduciary may delegate investment and management functions provided that the fiduciary exercises reasonable care, skill, and caution in all of the following:
 - (a) Selecting an agent.
 - (b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the governing instrument.
 - (c) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.
- (2) A fiduciary that complies with the requirements of subsection (1) is not liable to

the beneficiaries or to the fiduciary estate for a decision or action of the agent to whom the function was delegated.

(3) In performing a delegated function, an agent owes a duty to the fiduciary estate to exercise reasonable care to comply with the terms of the delegation. If an agent accepts the delegation of a fiduciary function from a fiduciary that is subject to the laws of this state, the agent submits to the jurisdiction of this state's court.

700.1511 Language invoking standard of prudent investor rule

Sec. 1511.

The following terms or similar language in a governing instrument, unless otherwise limited or modified, authorize any investment or strategy permitted under the Michigan prudent investor rule:

- (a) "Investments permissible by law for investment of trust funds".
- (b) "Legal Investments".
- (c) "Authorized investments".
- (d) "Using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital".
- (e) "Prudent man rule".
- (f) "Prudent trustee rule".
- (g) "Prudent person rule".
- (h) "Prudent investor rule".

750.1512 Application to existing fiduciary estates

Sec. 1512.

The Michigan prudent investor rule applies to a fiduciary estate that exists on or is created after this act's effective date. As applied to a fiduciary estate that exists on this act's effective date, the Michigan prudent investor rule governs only a decision or action that occurs after that date.

P. Other Duties - There are other duties of a fiduciary which are imposed on you when you accept this important trust. This publication is not intended to advise you of your complete responsibility as fiduciary. **You should consult with your attorney, or, if not represented by an attorney, take it upon yourself to become fully aware of your responsibility as a fiduciary.**

GUARDIANSHIP OF AN INDIVIDUAL WITH LEGAL INCAPACITY

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. 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.

POWERS OF ATTORNEY AND GUARDIANSHIP OF MINORS

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 case, 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.

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.

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.

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. A guardian ad litem, who is a court employee, may also be appointed to visit the minor and file a report with the Court regarding the condition of a minor under guardianship.