

Q: Does the guardian need to notify anyone of the petition?

A: The guardian must comply with all court instructions to properly notify interested parties. The incapacitated person must receive in-hand notice. In addition, the following parties must receive proper notice, as required by the Court:

- the Massachusetts Department of Developmental Services (if the incapacitated person is alleged to be mentally retarded);
- the Veterans Administration (if it owes the incapacitated person any benefits);
- the incapacitated person's heirs, including the incapacitated person's spouse or children, as determined by law.

The Court will issue specific instructions, called a citation, that may require certified mail, as well as publication of a notice in a particular newspaper, at additional cost.

Q: Does the court appoint a lawyer to represent the incapacitated person?

A: The Court has the power to appoint a lawyer to represent the incapacitated person if he or she, or anyone on his behalf, makes such a request. In the event that a guardian seeks authority to administer anti-psychotic drugs, or for extraordinary medical authority, the Court will appoint counsel to

represent the incapacitated person. Such counsel, called Rogers counsel, will require the petitioner to file numerous additional documents.

Q: When do a guardian's responsibilities end?

A: A temporary guardianship lasts ninety days. A permanent guardianship typically ends when the incapacitated person dies or upon further order of the Court. A guardian may resign with permission of the Court. The Court may remove a guardian, at the request of another person or on its own initiative, if the guardian is unsuitable or incapable.

Q: What should I do if I need legal assistance?

A: Contact the Legal Advocacy and Resource Center at 617-371-1234. LARC will conduct a telephone intake and can provide legal advice or make appropriate referrals.



June 1, 2010



Guardianship of an Adult in Massachusetts: Questions and Answers



A Publication of

Volunteer Lawyers Project
of the Boston Bar Association

**99 Chauncy St., 4th Floor
Boston, MA 02111
Tel.: (617) 423-0648
Fax: (617) 423-0061
Web: www.vlpnet.org**

Q: When is a guardianship appropriate?

A: Courts appoint a guardian for a person who suffers from a clinically diagnosed condition that impairs the person's ability to make or communicate decisions to such an extent that the individual lacks the ability to attend to his or her own physical health, safety or self-care, even with appropriate technological assistance. The Court may appoint a guardian to protect the incapacitated person's welfare.

Courts will not appoint a guardian for a person who merely shows poor judgment or difficulty making decisions. If the incapacitated person has significant assets, a Conservatorship may also be appropriate and required.

Q: Can a guardian make medical decisions for the incapacitated person?

A: Guardians have the authority to make general medical decisions for the incapacitated person. Guardians may generally consent to routine, noninvasive, non-experimental treatments for the incapacitated person.

Guardians must seek specific authority from the Court to administer antipsychotic medication to the incapacitated person, or for other extraordinary medical authority. A guardian is obligated to act in the best interest of the incapacitated person.

The power to commit the incapacitated person to a mental health or

mental retardation facility requires special court proceedings in the district court.

Q: Who can be a guardian?

A: A guardian must be at least 18 years old, live in the United States, and be competent to care for the incapacitated person. A guardian need not be related to the incapacitated person. An incapacitated person may have co-guardians.

Q: How can a person become a guardian?

A: A petitioner must complete and file numerous court documents and appear at a hearing to be appointed as guardian. A petition for guardianship must be filed by anyone seeking guardianship.

A petition for guardianship must be accompanied by a medical certificate. In a case where the incapacitated person is mentally retarded, a clinical team report is required rather than a medical certificate.

A medical certificate must be signed by a physician, psychologist or psychiatric nurse. A clinical team report must be signed by a physician, psychologist and social worker. A medical certificate is valid for 30 days from the date of examination. A clinical team report is valid for six months from the date of examination.

A Court must be satisfied that the incapacitated person is, in fact, incapacitated, and that the proposed person is suitable to serve as the incapacitated person's guardian.

Q: Where should a guardianship petition be filed?

A: A guardianship petition must be filed in the Probate Court in the Massachusetts County where the incapacitated person lives. If the incapacitated person does not live in Massachusetts, the petition should be filed in the state or country where the incapacitated person lives.

Q: How much does it cost to petition for guardianship?

A: There is no filing fee for a guardianship petition. The petitioner must pay for the cost of providing notice to all interested parties. That sometimes requires service by publication in a newspaper selected by the Court. There is \$50 filing fee for a bond with sureties. The Court will not generally require a bond with sureties. Certified Letters of Appointment cost \$20 each. A guardian who cannot afford to pay the fees can ask the Court to waive the fees.

Q: Does the guardian need to purchase a bond?

A: The Court requires that a guardian file a bond conditioned upon faithful discharge of all duties according to law. Sometimes, the Court requires that two other individuals or a bond company guarantee that the guardian will not improperly spend the incapacitated person's assets.