

Guardianships of Incapacitated Persons/Adults

Guardians have very serious and important responsibilities and obligations. Please read the following carefully and seek legal advice if you have any questions.

Q: What powers does a Guardian have?

A: Your powers, rights and responsibilities are contained in the Letters of Appointment from the court. For example, if the Letters of Appointment only authorize you to make medical decisions for the individual, you may not decide where the person may live or make decisions regarding his education. A guardianship does not extend to the property or belongings of the incapacitated person; a conservatorship would be required for such control.



Q: What is a “conservator”?

A: A conservator is someone who has power over the incapacitated person’s estate. Guardians have very limited powers over the estate of the incapacitated person. Sometimes, the court appoints a conservator for an incapacitated person. If so, you must send the conservator any excess monies of the individual at least every three months and ask them in advance before spending any of your own money for the individual’s care in order to get reimbursed.

Q: What powers does a guardian have over an incapacitated person’s property?

A: Guardians have very limited powers over the property of an incapacitated person. Guardians must take reasonable care of the incapacitated person’s personal property and may go to court on the incapacitated person’s behalf to protect the person’s other property. If there is no conservator appointed, guardians may also go to court to enforce any duty anyone has to support or pay money to the incapacitated person. Guardians may also use the incapacitated person’s available money to pay for the incapacitated person’s current needs for support, care, education, health and welfare. A guardian must conserve any excess money of the incapacitated person for his or her future needs. If the court has appointed a conservator over the incapacitated person’s estate, you must give this money to the conservator at least every three months.

Beyond that, guardians have no other power over the incapacitated person’s estate. Guardians who wish to manage the property and business affairs of the incapacitated person may need a conservatorship.



Q: Do I need to live with the incapacitated person?

A: No, but you do need to become personally involved in his or her care, so you know the individual’s capacities, limitations, needs, opportunities, and physical and mental health. The annual report requires you to describe how often and for how long you visit the person. The Court may remove you as guardian if the Court determines that you have not maintained sufficient personal contact with the person.

Q: What responsibilities does a guardian have?

A. You must file a Guardianship Plan within sixty (60) days of appointment. You must also file a detailed annual report every year, or as often as ordered by the Court.

Q: What powers does a guardian have?

A: A guardian may:

- Apply for and receive money for the support of the incapacitated person otherwise payable to his or her parent, guardian or custodian for his or her support (ex. money from a trust, Social Security or Supplemental Security Income, etc.)
- If there is no conservator, you may go to court to compel any person with a duty to support the person financially to do so.
- Consent to medical treatment for the incapacitated person.
- Consent or refuse to consent to the marriage, divorce, or adoption of the incapacitated person.
- Delegate to the incapacitated person certain responsibilities for decisions affecting his or her well-being, if reasonable under all the circumstances.
- Utilize desirable social and protective services for the person, e.g. counseling, services, advocacy services, legal services and other aid as appropriate.

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

A: Guardians may generally consent to routine, noninvasive, non-experimental treatments performed on the person (ex. routine check-ups, dentist appointments, eye and hearing examinations, etc.). Guardians must seek specific authority from the Court to administer any special medical treatment (ex. antipsychotic medication, sterilization, abortion, and electro-convulsive therapy).



Q: If I consent to medical treatment for the person and he or she is injured, can I be sued?

A: In general, no. If it is a routine, non-invasive, non-experimental treatment not requiring prior approval, you are not liable for the negligence or acts of third parties (e.g., doctors, nurses, etc.), unless a parent would be liable in the circumstances.

Q: Can I be sued for the incapacitated person's actions?

A: No. If the incapacitated person is arrested, you cannot be charged on his or her behalf. Likewise, if the incapacitated person owes anyone money, you do not have to pay with your money to satisfy the debt.

Q: Can I commit the incapacitated person to a mental health facility or nursing home?

A: You need a specific Court order from the Probate Court to admit an incapacitated person to a nursing home. A guardian never has the authority to commit an incapacitated person to a mental health facility. You need to bring committal proceedings in the District Court (not the Probate and Family court).

Q: What must be in the required Guardianship Plan and yearly report?

A: You must describe the current condition of the incapacitated person, his or her placement and care supervision, your visitations with the person, an accounting of the person's funds in your control and future plans for the incapacitated person's care. Attached is a sample Report.



Q: What happens if I don't file the Guardianship Plan and yearly report on time?

A: If you do not file, or are late in filing, the required reports, **the Court may remove or suspend you as guardian and appoint a new guardian for the individual.** It is **very** important that you file the reports and that you do so on time!

Q: Where do I mail the reports?

A: You must mail the report to the Probate and Family Court that issued the guardianship. The mailing addresses for the Probate courts are attached.

Q: Can I get compensated for being a guardian?

A: Yes. You are entitled to reasonable compensation for your services as guardian from the incapacitated person's estate. You are also entitled to a reimbursement for room, board and clothing you personally provide to the incapacitated person. An incapacitated person's funds, however, may not be enough to take adequate care of him or her. A Court or the conservator of the person's estate, if there is one, must approve these expenses.



Q: Do I need to use my own funds to take care of the person?

A: No, you may use the person's available funds to cover his or her present expenses. If you decide to use your own funds, you must obtain approval from the court or the person's conservator, if there is one, or you may not be able to be reimbursed.

Q: When do a guardian's responsibilities end?

A: A temporary guardianship lasts ninety (90) days. A permanent guardianship remains in effect until the incapacitated person dies, or until the Court removes the guardian. The Court may remove the guardian, upon anyone's request, if it finds the guardian is unsuitable or incapable, if the incapacitated person no longer requires a guardian or if the guardian wishes to resign.

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

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



Probate & Family Court Mailing Addresses by County

Barnstable Probate and Family Court

Probate and Family Court
Department
Barnstable Division
3195 Main Street, P.O. Box 346
Barnstable, MA 02630

Berkshire Probate and Family Court

Berkshire Probate and Family
Court
44 Bank Row
Pittsfield, MA 01201

Bristol Probate and Family Court

Bristol Probate and Family Court
21 Father DeValles Boulevard
Fall River, MA 02723

Dukes Probate and Family Court

Dukes County Probate and Family
Court
P.O. Box 237
81 Main Street
Edgartown, MA 02539

Essex Probate and Family Court

Essex Probate and Family Court
36 Federal Street
Salem, MA 01970

Franklin Probate and Family Court

Franklin Probate and Family
Court
425 Main St.
P.O. Box 590
Greenfield, MA 01302

Hampden Probate and Family Court

Probate and Family Court
Department
50 State Street
Springfield, MA 01102-0559

Hampshire Probate and Family Court

Hampshire Probate and Family
Court
33 King Street, Suite 3
Northampton, MA 01060

Middlesex Probate and Family Court

Middlesex Probate and Family
Court
P.O. Box 410480
East Cambridge, MA 02141

Norfolk Probate and Family Court

Probate and Family Court
Norfolk Division
35 Shawmut Road
Canton, MA 02021

Suffolk Probate and Family Court

Suffolk Probate and Family Court
P.O. Box 9667
24 New Chardon Street, 3rd Floor
Boston, MA 02114

Nantucket Probate and Family Court

Nantucket Probate and Family
Court Department
16 Broad Street
P.O. Box 1116
Nantucket, MA 02554

Plymouth Probate and Family Court

Plymouth Probate and Family
Court
52 Obery Street
Plymouth, MA 02360

Worcester Probate and Family Court

Worcester Probate and Family
Court
225 Main Street
Worcester, MA 01608