

GUARDIANSHIPS

There are three types of **guardianships** granted and overseen by the Tuscola County Probate Court guardianships for minors, guardianships for adults and guardianships for individuals with developmental disabilities.

- Adult guardianships are used when an individual is impaired by mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause so that they lack sufficient understanding or capacity to make or communicate informed decisions and need someone to make such decisions for them. Select the link for more details regarding [adult guardianship](#).
- Minor guardianships are used to provide legal authority for adults, other than the parents of the minor, to take care of the minor for a short or long time because the parent or parents of the minor are unwilling or unable to safely and adequately care for their child. While a minor guardianship is in place the guardian, and not the parent, has the right and responsibility to make decisions about and care for the minor child. Select the link for more details regarding [minor guardianship](#).
- Developmentally disabled guardianships are used when an individual who is over five years of age has a severe, chronic condition which meets certain requirements. A guardianship for a developmentally disabled person should be undertaken only to promote and protect the well-being of the ward and encourage the development of maximum self-reliance for the ward. The guardianship should be limited by the court based on the developmentally disabled individual's actual mental and adaptive limitations. Select the link for more details regarding [developmentally disabled guardianships](#).

ADULT

An adult guardianship is used when an individual is impaired by mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause so that they lack sufficient understanding or capacity to make or communicate informed decisions and need someone to make such decisions for them. MCL 700.1105.

The proper venue (place) to file a petition for guardianship is the Probate Court in the county where the adult resides or is found, including an institution within the county if the adult is placed there by valid court order.

An adult individual can petition the court to have a guardian appointed for them, or any person interested in the adult's welfare may petition for the appointment of a guardian. An interested person or the subject of a guardianship petition may file an answer to the petition and either object to the guardianship altogether or ask the court to order different relief than requested in the petition.

To file a case, use form [Petition for Appointment of Guardian of Incapacitated Individual \(PC 625\)](#) . There is a \$150 filing fee that must be paid when the petition is filed. The Probate Court accepts payment by cash, check or money order. The Probate Court does not accept payment by credit or debit card. The petition may include requests for various types of relief including an order preventing a person from moving the adult in question from their home or facility or that visitation be set. The petition must either request that full guardianship or limited guardianship be ordered, and must specify the scope of the limited guardianship if requested. Whichever type of guardianship is requested, the petition must contain specific facts about the adult's condition and specific examples of the adult's recent conduct which demonstrates the need for the appointment of a full or limited guardian.

It is the petitioner's responsibility to give notice to all interested persons of the petition and the time and place of the hearing on the petition. Interested persons for adult guardianship cases include the adult who is alleged to be incapacitated, a person named as attorney-in-fact under a Durable Power of Attorney, if any, the spouse, or children if there is no spouse, or presumptive heirs if there is no spouse or children of the allegedly incapacitated person, the person who has the care and custody of the allegedly incapacitated person and the person who is nominated to be the guardian of the allegedly incapacitated person. MCR 5.125.

In addition to those individuals, in some circumstances other interested persons must be given notice including the Administrator of Veterans' Affairs if benefits are payable by the Veterans' Administration on account of the respondent, a guardian, conservator, or guardian ad litem of a person who is an interested person, an attorney who has filed an appearance with the Court, any special fiduciary and any person who has filed a request for notice with the Court.

Because the law views limiting or removing an adult's right to make decisions or to care for themselves very seriously, the court must give written information to a petitioner for an adult guardianship about alternatives to appointment to a full guardian. These alternatives include a limited guardian, a conservator, a patient advocate designation, a do-not-resuscitate designation and a Durable Power of Attorney. MCL 700.5303.

If the incapacitated adult has designated someone to serve as guardian for them the Court must appoint that person to be guardian unless they are unfit or unwilling to serve. If no designation is made by the incapacitated adult, the law provides for priorities for appointment: the spouse, an adult child, a parent, another relative with whom the adult has lived with for more than 6 months before the petition was filed or a person nominated by the person who is caring for or paying benefits to the subject of the petition. MCL 700.5313. If no person having priority is available or willing to serve as guardian, the court may appoint any competent adult to serve, including a professional guardian.

Upon receiving the petition for appointment of guardian, unless the person who is the subject of the petition has an attorney of their own choice, the court must appoint a guardian ad litem to represent the best interest of the person who is the subject of the petition. The guardian ad litem must personally visit the person who is the subject of the petition, explain to the individual the nature, purpose and legal effects of a guardianship, and must report to the court their findings and recommendation regarding the guardianship petition.

If necessary, the Court may order that the person who is the subject of the petition be examined by a physician or mental health professional for the purpose of reporting to the Court their findings concerning the capacity of the individual, what their infirmities are and how they impact the individual's ability to receive or evaluate information in making decisions, a listing of medication that the individual is taking and the prognosis for the individual. The person who is alleged to be incapacitated has the right to obtain an independent evaluation at their own expense unless the court finds them to be indigent. The report is not part of the public record and is available only to the Court, the individual who is alleged to be incapacitated, the petitioner, their legal counsels and anyone else the Court may determine. MCL 700.5304.

In Tuscola County mediation is used as a way to resolve guardianship contests and may be ordered by the Court.

At the hearing, the individual who is alleged to be incapacitated has the right to be present and to see and hear all of the evidence about their alleged incapacity. The Court must dismiss the guardianship petition, or enter an alternative order, unless there is clear and convincing evidence that the person is incapacitated and that the appointment is necessary to provide continuing care and supervision of the individual. MCL 700.5306. If there is clear and convincing evidence that the individual is incapacitated and is totally without capacity to care for themselves the court must specify that finding of fact in the [Order Regarding Appointment of Guardian of Incapacitated Individual \(PC 631\)](#).

The Court will also sign [Letters of Guardianship \(PC 633\)](#) which gives the guardian the legal authority to act on behalf of the incapacitated adult. In Tuscola County, the Letters and the Order are signed at the conclusion of the hearing. Then the file is brought by court staff from the courtroom to the probate court office where a certified copy of the Letters is made and given to the guardian. The Guardian signs the [Acceptance of Appointment \(PC 571\)](#) and the Confidential Information Sheet. The Guardian also signs up to attend a mandatory training session regarding the responsibilities that the guardian has to the court and to the adult ward.

If an emergency arises concerning the individual who is the subject of a guardianship petition and no one has the authority to act on behalf of the individual, the court may hold a hearing if the petitioner gives notice to the person who is the subject of the petition. The Court must appoint a guardian ad litem for the individual unless doing so would cause a delay such that the individual would suffer serious harm. If the court is satisfied at the hearing that adequate proof exists to find that the subject of the petition is incapacitated, the court may enter an order appointing a temporary guardian and spelling out any limitations on the guardian's power. The appointment of a temporary guardian may occur only in the course of a proceeding for the appointment of a permanent guardian. If temporary relief is granted, the hearing to appoint a full guardian must be held within 28 days of the order appointing a temporary guardian.

Every year that the guardianship continues, the guardian must file with the court the [Annual Report of Guardian on Condition of Legally Incapacitated Individual \(PC 634\)](#) which updates the court on the condition of the adult ward. This form must be filed each year on the anniversary date of the issuance of the Letters of Guardianship and must be served on the ward and all interested persons.

The court may review an adult guardianship whenever necessary but it must review it every three years on the anniversary of the issuance of the Letters of Guardianship. In Tuscola County this review is achieved by an investigator meeting face-to-face with the adult ward and observing their environment. The investigator prepares a report which is filed with the court. The court reviews the report and may take further action as needed. Anyone interested in a ward's welfare, or the ward themselves, may file a petition with the court to have the guardian removed, appoint a successor guardian or modify the terms of guardianship. The petitioner does this by filing a [Petition to Terminate or Modify Guardianship \(PC 675\)](#) along with a \$20 motion fee with the court. If the legally incapacitated individual petitions for termination or modification of the guardianship and they do not have an attorney the court must appoint an attorney for them. MCR 5.408. If another person petitions for the modification or termination of the guardianship the court must appoint a guardian ad litem to represent the best interests of the incapacitated person. The petitioner must service notice of the hearing on the petition to all interested parties.

At the hearing on the petition the court may terminate the guardianship, modify it or continue it. The guardianship will also terminate upon the death of the guardian, death of the ward, or determination that the guardian is incapacitated.

FILING PROCEDURES – LEGALLY INCAPACITATED ADULT GUARDIANSHIPS

Note: The Court is prohibited by law (Sec. 1211 of the Estates and Protected Individuals Code [EPIC]) from providing legal advice and completing forms.

This item provides general information concerning the filing procedures for adult guardianships and may be useful as a guide. If you have any questions, consider contacting an attorney for assistance.

- Filing Fee** \$150.00
Note: This fee may be waived if the person filing for Guardianship can show they are indigent (i.e., petitioner needs to show a current Medicaid card in own name).
- Forms Used** PC 625, Petition for Appointment of Guardian of Incapacitated Individual
PC 571, Acceptance of Appointment
PC 634, Annual Report of Guardian on Condition of Legally Incapacitated Individual (Note: This form is used after a guardian is appointed and must be filed each year.)
- Service** Publication is required for persons whose address or whereabouts are unknown. The newspaper fee (currently \$45.00) is paid to the Tuscola County Advertiser when the petition is filed. For more information on publication, you may wish to contact them:
- Tuscola County Advertiser
344 N State St.
Caro, Mich. 48723
(989) 673-3181
- Interested Persons** The interested persons need to be listed on the petition, along with their proper address. If an interested person is not included or is not properly served, the hearing cannot be held. The interested persons in a petition for appointment of a guardian of a legally incapacitated individual are:
1. The alleged legally incapacitated individual,
 2. If known, a person named as attorney in fact under a durable power of attorney,
 3. The alleged legally incapacitated individual's spouse,
 4. The alleged legally incapacitated individual's adult children and the individual's parents,
 5. If no spouse, child, or parent is living, the presumptive heirs of the individual,

6. The person who has the care and custody of the alleged legally incapacitated individual, and
7. The nominated guardian.

Note: The petition must include specific facts about the adult's condition and examples of the adult's recent conduct that demonstrates the need for the appointment of a guardian.

Hearing Date Your Petition will be set for hearing by the Court. Typically, the hearing date is 4-6 weeks after the petition is filed. Your Notice of Hearing displays the correct date, time, place, and assigned Judge. You, the Petitioner, must attend the hearing or your Petition will be dismissed.

Guardian ad Litem The court must, by law, appoint a Guardian ad Litem (GAL) to represent the interest of the alleged legally incapacitated individual unless the person has his/her own attorney. It will be the GAL's responsibility to visit the person and make a recommendation as to whether or not a guardian is needed.

The GAL is not an employee of the court but a licensed practicing attorney appointed by the court. If there is no conservatorship, or there are no funds in the conservatorship, the county will be billed for the legal services of the Guardian ad Litem.

Attorney If the person alleged to be legally incapacitated objects to the petition, the guardian ad litem must report this to the court. The court must then remove the guardian ad litem and appoint an attorney to represent the subject of the petition. The attorney will appear at the hearing to represent the alleged legally incapacitated individual.

CLOSING PROCEDURES - ADULT GUARDIANSHIPS

Note: The Court is prohibited by law (Sec. 1211 of the Estates and Protected Individuals Code [EPIC]) from providing legal advice and completing forms.

This item provides general information concerning the closing procedures for adult guardianships and may be useful as a guide. If you have any questions, consider contacting an attorney for assistance.

Closing upon Adult's Death: There is no fee. The guardian simply files form [PC 634](#), Annual Report of Guardian on Condition of Legally Incapacitated Individual (indicate on the form that this is a final report). Also, please submit a photocopy of the ward's death certificate. The case will then be closed by the Court.

The Following Procedures Apply to Attempting to Terminate an Adult Guardianship Before the Ward's Death:

Filing Fee \$20.00 (No fee if ward is petitioner.)

Note: This fee may be waived if the person filing for termination of the Guardianship can show they are indigent (i.e., petitioner needs to show a current Medicaid card in own name).

Forms Used [PC 675](#), Petition to Terminate\Modify Guardianship

Who Can File Any person interested in the person's welfare, including the Legally Incapacitated Individual.

Interested Persons Only list new interested persons and/or change of addresses for any interested persons since the guardianship was opened. If an interested person is not included or is not properly served, the hearing cannot be held. The interested persons in a petition for termination or modification of a guardianship for a legally incapacitated individual are:

1. The legally incapacitated individual,
2. If known, a person named as attorney in fact under a durable power of attorney,
3. The legally incapacitated individual's spouse,
4. The legally incapacitated individual's adult children and the individual's parents,
5. If no spouse, child, or parent is living, the presumptive heirs of the individual,
6. The person who has the care and custody of the legally incapacitated individual, and
7. The guardian.

Hearing Date

Your Petition will be set for hearing by the Court. Typically, the hearing date is 4-6 weeks after the petition is filed. Your Notice of Hearing displays the correct date, time, place, and assigned Judge. You, the Petitioner, must attend the hearing or your Petition will be dismissed.

Guardian ad Litem

The court must, by law, appoint a Guardian ad Litem (GAL) to represent the interest of the alleged legally incapacitated individual unless the person has their own attorney. It will be the GAL's responsibility to visit the person and make a recommendation as to whether or not a guardian is still needed.

Note: If the ward is the person petitioning to terminate the guardianship, no GAL is appointed; instead a lawyer is appointed to represent the ward if they do not have their own attorney.

The GAL is not an employee of the court but a licensed practicing attorney appointed by the court.

MINOR

Minor guardianships are used to provide legal authority for adults other than the parents of the minor to take care of the minor for a short or long time because the parent or parents of the minor are unwilling or unable to safely and adequately care for their child. While a minor guardianship is in place the guardian, and not the parent, has the right and responsibility to make decisions about and care for the minor child.

The parent of an unmarried minor may appoint a guardian for his/her child through a will or other writing. If both parents are dead or legally incapacitated, or if the surviving parent no longer has any parental rights, the appointment becomes effective when the guardian files an acceptance of appointment unless the minor is 14 years old or older and objects.

The proper venue (place) to file a petition for guardianship is the Probate Court in the county where the minor resides or is found.

There are two kinds of guardianships for minors, Full Guardianship and Limited Guardianship.

Full Guardianship

A full guardian of a minor has the same powers and responsibilities toward a child as does a custodial parent except that the guardian is not obligated to support the child with personal funds and is not liable to third parties for the acts of the minor. Select the link for more details regarding full guardianship.

Limited Guardianship

A limited guardianship can be put in place with the consent of the custodial parent(s) for a specific period of time to enable the parent(s) to address problems that prevent the children from living with their parent(s). Only the custodial parent or parents can petition the court for a limited guardianship. Select the link for more details regarding limited guardianship.

FILING PROCEDURES - FULL MINOR GUARDIANSHIPS

Note: The Court is prohibited by law (Sec. 1211 of the Estates and Protected Individuals Code [EPIC]) from providing legal advice and completing forms. This item provides general information concerning the filing procedures for full minor guardianships and may be useful as a guide. If you have any questions, consider contacting an attorney for assistance.

Filing Fee \$150.00 per child

Note: This fee may be waived if the person filing for Guardianship can show they are indigent (i.e., petitioner needs to show a current Medicaid card in own name).

Forms Used [PC 651](#), Petition for Appointment of Guardian of Minor
[PC 571](#), Acceptance of Appointment
[PC 654](#), Annual Report of Guardian on Condition of Minor (Note: This form is used after a guardian is appointed and must be filed each year.)

Service Publication is required for persons whose address or whereabouts are unknown. The newspaper fee (currently \$45.00) is paid to the Tuscola County Advertiser when the petition is filed. For more information on publication, you may wish to contact:

Tuscola County Advertiser
344 N. State St.
Caro, Mich. 48723
(989) 673-3181

Interested Persons The interested persons need to be listed on the petition, along with their proper address. If an interested person is not included or is not properly served, the hearing cannot be held. The interested persons in a petition for appointment of a limited guardian of a minor are:

1. The minor, if 14 years of age or older,
2. If known, each person who had the principal care and custody of the minor during the 63 days before the petition was filed,
3. The parents of the minor or, if neither of them is living, any grandparents and the adult presumptive heirs of the minor, and
4. The nominated guardian.

IN GUARDIANSHIP CASES, IF A PARTY IS INCARCERATED UNDER THE JURISDICTION OF THE MICHIGAN DEPARTMENT OF CORRECTIONS, THEIR NAME, ADDRESS, AND PRISONER NUMBER MUST BE LISTED ON THE PETITION. TO OBTAIN THIS INFORMATION, CALL

(517) 373-0284 OR CLICK ON
www.state.mi.us/mdoc/asp/otis2.html

When Full Minor Guardian can be Appointed A full guardian can be appointed for a minor under one of these situations:

1. Parental rights of both parents or surviving parent have been terminated or suspended by prior court order, judgment of divorce or separate maintenance, death, adjudication of mental incompetency, disappearance, or imprisonment.
2. Parent(s) have permitted the minor to reside with another person and have not provided the other person with legal authority for the minor's care and maintenance and the minor is not residing with their parent(s) when the petition is filed.
3. Minor's biological parents have never been married to each other, the custodial parent dies or is missing and the other parent has not been given legal custody, and the nominated guardian is related to the minor within the fifth (5th) degree by marriage, blood, or adoption.

Hearing Date Your Petition will be set for hearing by the Court. Typically, the hearing date is 4-6 weeks after the petition is filed. Your Notice of Hearing displays the correct date, time, place, and assigned Judge. You, the Petitioner, must attend the hearing or your Petition will be dismissed.

Guardian ad Litem/ Attorney The Court may appoint a Guardian ad Litem (GAL) to investigate the situation and make a recommendation to the court prior to the hearing.

The GAL is not an employee of the court but a licensed practicing attorney assigned by the court.

CLOSING PROCEDURES - FULL MINOR GUARDIANSHIPS

Note: The Court is prohibited by law (Sec. 1211 of the Estates and Protected Individuals Code [EPIC]) from providing legal advice and completing forms. This item provides general information concerning the closing procedures for full minor guardianships and may be useful as a guide. If you have any questions, consider contacting an attorney for assistance.

Closing upon Minor Turning age 18: The Court automatically terminates the guardianship when the ward turns age 18. There is no fee.

The Following Procedures Apply to Termination of a Full Minor Guardianship Before the Child Turns age 18:

Filing Fee \$20.00 per child

Note: This fee may be waived or suspended if the person filing for Guardianship can show they are indigent (i.e., petitioner needs to show a current Medicaid card in own name).

Forms Used [PC 675](#), Petition to Terminate\Modify Guardianship

Interested Persons Only list new interested persons and/or change of addresses for any interested persons since the guardianship was opened. If an interested person is not included or is not properly served, the hearing cannot be held. The interested persons in a petition to terminate or modify a full minor guardianship are:

1. The minor, if 14 years of age or older,
2. If known, each person who had the principal care and custody of the minor during the 63 days before the petition was filed,
3. The parents of the minor or, if neither of them is living, any grandparents and the adult presumptive heirs of the minor, and
4. The guardian.

IN GUARDIANSHIP CASES, IF A PARTY IS INCARCERATED UNDER THE JURISDICTION OF THE MICHIGAN DEPARTMENT OF CORRECTIONS, THEIR NAME, ADDRESS, AND PRISONER NUMBER MUST BE LISTED ON THE PETITION. TO OBTAIN THIS INFORMATION, CALL (517) 373-0284 OR CLICK ON www.state.mi.us/mdoc/asp/otis2.html

Hearing Date Your Petition will be set for hearing by the Court. Typically, the hearing date is 4-6 weeks after the petition is filed. Your Notice of Hearing displays the correct date, time, place, and assigned Judge. You, the Petitioner, must attend the hearing or your Petition will be dismissed.

Guardian ad Litem/ Attorney The Court may appoint a Guardian ad Litem (GAL) to investigate the situation and make a recommendation to the court prior to the hearing.

The GAL is not an employee of the court but a licensed practicing attorney assigned by the court.

FILING PROCEDURES - LIMITED MINOR GUARDIANSHIPS

Note: The Court is prohibited by law (Sec. 1211 of the Estates and Protected Individuals Code [EPIC]) from providing legal advice and completing forms. This item provides general information concerning the filing procedures for minor limited guardianships and may be useful as a guide. If you have any questions, consider contacting an attorney for assistance.

Filing Fee \$150.00 per child

Note: This fee may be waived if the person filing for Guardianship can show they are indigent (i.e., petitioner needs to show a current Medicaid card in own name).

Forms Used [PC 650](#), Petition for Appointment of Limited Guardian of Minor
[PC 652](#), Limited Guardianship Placement Plan
[PC 571](#), Acceptance of Appointment
[PC 654](#), Annual Report of Guardian on Condition of Minor (Note: This form is used after a guardian is appointed and must be filed each year.)

Who can File Only the CUSTODIAL PARENT(S) of the child can file a Limited Guardianship Petition. If there are two custodial parents, both must sign the petition. If someone other than the custodial parent(s) wants to become guardian of a minor, the person must file a petition for full guardianship.

Placement Plan The custodial parent(s) must also file a Limited Guardianship Placement Plan ([PC 652](#)) with the petition. The plan must include information on the following:

1. Reason(s) for limited guardianship
2. Visitation and contact by parent(s) sufficient to maintain parent\child relationship
3. Length of limited guardianship
4. Financial support for minor
5. Any other provisions parties agree to include.

Service Publication is required for persons whose address or whereabouts are unknown. The newspaper fee (currently \$45.00) is paid to the Tuscola County Advertiser when the petition is filed. For more information on publication, you may wish to contact:

Tuscola County Advertiser
344 N. State St.
Caro, Mich. 48723
(989) 673-3181

Interested Persons The interested persons need to be listed on the petition, along with their proper address. If an interested person is not included or is not properly served, the hearing cannot be held. The interested persons in a petition for appointment of a limited guardian of a minor are:

1. The minor, if 14 years of age or older,
2. If known, each person who had the principal care and custody of the minor during the 63 days before the petition was filed,
3. The parents of the minor or, if neither of them is living, any grandparents and the adult presumptive heirs of the minor, and
4. The nominated guardian.

IN GUARDIANSHIP CASES, IF A PARTY IS INCARCERATED UNDER THE JURISDICTION OF THE MICHIGAN DEPARTMENT OF CORRECTIONS, THEIR NAME, ADDRESS, AND PRISONER NUMBER MUST BE LISTED ON THE PETITION. TO OBTAIN THIS INFORMATION, CALL (517) 373-0284 OR CLICK ON www.state.mi.us/mdoc/asp/otis2.html

Hearing Date Your Petition will be set for hearing by the Court. If all the interested persons are present when the petition is filed, a hearing may be held immediately. Typically, the hearing date is 4-6 weeks after the petition is filed. Your Notice of Hearing displays the correct date, time, place, and assigned Judge. You, the Petitioner, must attend the hearing or your Petition will be dismissed

Guardian ad Litem/ Attorney The Court may appoint a Guardian ad Litem (GAL) to investigate the situation and make a recommendation to the court prior to the hearing.

The GAL is not an employee of the court but a licensed practicing attorney assigned by the court.

CLOSING PROCEDURES - LIMITED MINOR GUARDIANSHIPS

Note: The Court is prohibited by law (Sec. 1211 of the Estates and Protected Individuals Code [EPIC]) from providing legal advice and completing forms. This item provides general information concerning the closing procedures for minor limited guardianships and may be useful as a guide. If you have any questions, consider contacting an attorney for assistance.

Closing upon Minor Turning age 18: The Court automatically terminates the guardianship when the minor turns age 18. There is no fee.

The Following Procedures Apply to Termination of a Limited Minor Guardianship Before the Child Turns age 18:

Filing Fee \$20.00 per child

Note: This fee may be waived if the person filing for termination of the Guardianship can show they are indigent (i.e., petitioner needs to show a current Medicaid card in own name).

Forms Used [PC 675](#), Petition to Terminate\Modify Guardianship

Or

[PC 651](#), Petition for Appointment of (Full) Guardian of Minor

Who can File Only the CUSTODIAL PARENT(S) of the child can file a Petition to Terminate a Limited Guardianship. If there are two custodial parents, both must sign the petition.

Any person interested in the child's welfare can file a petition for the appointment of a full guardian for the minor.

Interested Persons Only list new interested persons and/or change of addresses for any interested persons since the limited guardianship was opened. If you are filing a petition for a full minor guardianship, see [Filing Procedures – Full Minor Guardianships](#) for information on this procedure. If an interested person is not included or is not properly served, the hearing cannot be held. The interested persons in a petition to modify or terminate a limited minor guardianship are:

1. The minor, if 14 years of age or older,
2. If known, each person who had the principal care and custody of the minor during the 63 days before the petition was filed,
3. The parents of the minor or, if neither of them is living, any grandparents and the adult presumptive heirs of the minor, and

4. The guardian.

IN GUARDIANSHIP CASES, IF A PARTY IS INCARCERATED UNDER THE JURISDICTION OF THE MICHIGAN DEPARTMENT OF CORRECTIONS, THEIR NAME, ADDRESS, AND PRISONER NUMBER MUST BE LISTED ON THE PETITION. TO OBTAIN THIS INFORMATION, CALL (517) 373-0284 OR CLICK ON www.state.mi.us/mdoc/asp/otis2.html

Hearing Date

Your Petition will be set for hearing by the Court. Typically, the hearing date is 4-6 weeks after the petition is filed. Your Notice of Hearing displays the correct date, time, place, and assigned Judge. You, the Petitioner, must attend the hearing or your Petition will be dismissed.

Guardian ad Litem/ Attorney

The Court may appoint a Guardian ad Litem (GAL) to investigate the situation and make a recommendation to the court prior to the hearing.

The GAL is not an employee of the court but a licensed practicing attorney assigned by the court.

DEVELOPMENTAL DISABILITY GUARDIANSHIP

What is a Developmental Disability?

MCL 330.1100a(20)

A developmental disability in an individual who is over five years of age and has a severe, chronic condition which meets all of the following requirements:

- It is attributable to a mental or physical impairment or a combination of mental and physical impairments.
- It manifested before the individual is 22 years old.
- It is likely to continue indefinitely.
- It results in substantial function limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency.
- It reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or sacrifices that are of lifelong or extended duration and are individually planned and coordinated.

For individuals from birth to age five for whom services are not yet provided, a substantial developmental delay or specific congenital or acquired condition with a high probability of resulting in developmental disability as defined above is necessary for classification as developmentally disabled.

Purpose of a Guardianship for a Developmentally Disabled Individual

MCL 330.1602

A guardianship establishes a relationship between the Guardian and the ward similar to a parent child relationship. The Guardian undertakes duties and responsibilities to the ward guided by the order of the Tuscola County Probat Court. A guardianship for a developmentally disabled person should be undertaken only to promote and protect the well-being of the ward and encourage the development of maximum self-reliance for the ward. The guardianship should be limited by the Court based on the developmentally disabled individual's actual mental and adaptive limitations.

Who may Petition for Appointment as Guardian for an Individual with a Developmental Disability?

MCL 330.1600(c)

The individual with the developmental disability can petition for appointment of a guardian. An adult relative or friend, an official or representative of an agency concerned with the welfare of developmentally disabled persons, or any other person found suitable by the Court may also petition to appoint a legal guardian for a person with a developmental disability.

Who may be Appointed Guardian of a Person with a Developmental Disability?

[MCL 330.1628](#)

The Court may appoint any suitable person or agency to serve as guardian. The Court will not appoint any agency directly involved in providing services to the developmentally disabled person unless no other suitable person can be found. Before a person is appointed guardian, the Court will make an effort to question the developmentally disabled person concerning their preference of a person to be appointed guardian. If the developmentally disabled person articulates a preference, then court will give the preference due consideration.

What Is The Difference Between A Guardian Of The Person And The Guardian Of The Estate?

Generally, a guardian of the person makes decisions about the person, such as decisions related to medical care or housing. A guardian of the estate makes decisions about the property or the finances of the individual with a developmental disability. A person can serve as both the guardian of the person and guardian of the estate or two separate people can function in these roles, such as a parent being guardian of the person and an attorney being guardian of the estate.

Types of Court Appointed Guardians

Plenary guardian: possesses all the legal rights and powers of a full guardian of the person or, of the estate, or both of the person and of the estate. [MCL 330.1600\(d\)](#).

Partial guardian: possesses fewer than all the legal rights and powers of a plenary guardian. These powers, rights, and duties are enumerated in the Court's order of appointment. This guardianship also only lasts for 5 years. [MCL 330.1600\(e\)](#).

Temporary guardian: possesses only those powers, rights, and duties specifically set forth in the Court's order of appointment. This appointment is made pending the appointment of a plenary or partial guardian when under emergency circumstance it is necessary for the welfare or protection of the person. [MCL 330.1607](#).

Standby guardian: may be designated by the court to act upon the death, incapacity, resignation, or temporary absence of the guardian without any further court proceeding [MCL 330.1640](#).

Petitioning for Guardianship of a Developmentally Disabled Individual

[MCL 330.1609](#), [MCL 330.1612](#), [MCL 330.1614](#)

If a person believes that an individual who appears to be developmentally disabled needs a guardian, they must file a [Petition for Appointment of Guardian, Individual with Alleged Developmental Disability \(PC 658\)](#) with the Probate Court. The petition should name all interested persons, including the developmentally disabled person's living parents, children (if applicable), and siblings. After a petition is filed, the Court will set a hearing date which will be within 30 days of the filing. The Court will also contact Community Support and Treatment Services, who will perform the required evaluation of the developmentally disabled person and prepare a 612 Report.

Hearings, Notice of Hearing

Notice of the date and place of hearing is to be given to the petitioner, the respondent (the alleged developmentally disabled individual), the respondent's presumptive heirs, the 612 Report preparer, the director of the facility where the respondent is residing, and the respondent's legal counsel. [MCL 330.1614\(3\)](#). The petitioner has the responsibility to serve the Notice of Hearing. It must comply with the requirements of the Michigan Court Rules. The parties must be given notice 7 days before the hearing if by personal service or 14 days before the hearing if by mail. A completed [Proof of Service \(PC 564\)](#) must be returned to the court or the hearing will not occur.

At the Hearing

[MCL 330.1617](#)

The respondent and their legal counsel must attend the hearing. The petitioner and the preparer of the 612 report must also attend the hearing. At the hearing both the petitioner and the preparer of the 612 report must testify. The respondent has the right to request independent evaluation, the right to request a jury trial about issues of fact, and the right to legal counsel.

The Court must find by clear and convincing evidence that the person is developmentally disabled and must find the degree of their disability. The guardian, if appointed, will be authorized to do only what the respondent cannot do for themselves and is limited by the court order. If the Court makes such a finding, the judge will sign an [Order Appointing Guardian for Individual with a Developmental Disability \(PC 660\)](#) and [Letters of Guardianship of Individual with Developmental Disability \(PC 662\)](#). A certified copy of the Letters of Guardianship will be provided to the guardian by the Probate Court office.

FILING PROCEDURES - GUARDIANSHIP FOR AN INDIVIDUAL WITH A DEVELOPMENTAL DISABILITY

Note: The Court is prohibited by law from providing legal advice. This item provides general information concerning the filing procedures for a guardianship for an individual with a developmental disability and may be useful as a guide. If you have any questions, consider reviewing the [Guardianship for an Individual with a Developmental Disability](#) heading under the Frequently Asked Question (FAQ) section of the website, contacting an attorney for assistance, or calling the Tuscola Behavior Health Systems of Tuscola County at (989) 673 6191.

Who Can File? Anyone can file a petition for the appointment of a guardian for an individual who is developmentally disabled.

How Does the Process Work? Unless an emergency exists and the appointment of a temporary guardian is requested, evaluations of the individual with a developmental disability must be conducted.

Whoever files the petition for the appointment of a guardian for an individual with a developmental disability, they must attach evaluations of the proposed ward's mental, physical, social, educational condition, adaptive behavior, and social skills. These evaluations can be obtained by contacting your own private sources or by contacting the Tuscola Behavioral Health Systems (TBHS). If a facility or program director is the petitioner, then a recommendation from the Informed Consent Board is required.

The person who began the process can remain involved in the proceeding and request that they be appointed guardian of the individual with a developmental disability.

Is a Hearing Required? A hearing is required for all petitions for the appointment of a guardian for an individual with a developmental disability. Testimony must be taken, and the individual with a developmental disability must be present.

Can a Temporary Guardian be Appointed? A request for a temporary guardian can be made as part of a petition for the appointment of a guardian for an individual with a developmental disability. An original letter from a doctor may be included stating the nature and extent of the emergency. A guardian ad litem (GAL) will be appointed by the Court, who will make a report to the Judge. A hearing will be held within a week on the request for a temporary guardian. An evaluation by an agency will not be conducted at this time. If a temporary guardian is appointed, it is for a maximum of six months; during this time, another petition for appointment of a guardian for an individual with a developmental disability must be

filed.

Is There a Filing Fee?

No filing fee is required for a petition for appointment of a guardian for an individual with a developmental disability.

INVENTORY

What is an Inventory?

An Inventory is an official list filed or submitted to the Probate Court that describes all the property owned by a Decedent, Protected Individual, or an Individual with Developmental Disabilities and includes accurate values for the property. Personal Representatives, Conservators, and Guardians of the Estate of an Individual with Developmental Disabilities must prepare an Inventory.

Forms Used – [PC 577](#), Inventory (Decedent Estate), [PC 674](#), Inventory (Conservatorship or Guardian of the Estate of an Individual with Developmental Disabilities)

When does an Inventory have to be filed or submitted?

Decedent Estate

For Unsupervised Administration (DE) – Must be submitted within 91 days of the date the Personal Representative's Letters of Authority were issued.

Note: The Probate Court will review the Inventory to determine if it appears to be accurate and complete, and to officially calculate the inventory fee. The Inventory will be returned to the Personal Representative unless they would like to file it with the Court.

For Supervised Administration (DA) – Must be filed within 91 days of the date the Personal Representative's Letters of Authority were issued.

Conservatorship

Must be filed within 56 days of the date the Conservator's Letters of Authority were issued.

Guardian of the Estate of an Individual with Developmental Disabilities

Must be filed within 56 days of the date the Guardian of the Estate's Letters of Authority were issued.

What has to be listed on an Inventory?

For Decedent Estates, all the assets owned by the Decedent at the date of death.

For Conservatorships or Guardianships of the Estate for an Individual with Developmental Disabilities, all the assets owned by the Protected Individual or the Individual with Developmental Disabilities at the date the fiduciary's Letters of Authority were issued.

For real estate, include the street address and the complete legal description as reflected on the deed.

For motor vehicles, boats, trailers, or motor homes, include the year, make, model, and vehicle identification number (VIN).

For ordinary items, combine them into categories (i.e., clothing, furniture, etc.).

For items with special value, list them separately (i.e., antiques, coin\stamp collections, art, fine dishes\silverware).

Note: For Conservatorships, list the property the Protected Individual owns with others, along with the type of ownership (i.e., joint tenancy, tenancy in common, etc.).

For additional information, see the instructions contained on the Inventory forms ([PC 577](#) or [PC 674](#)).

How are assets on an Inventory valued?

For all assets, use the fair market value as of the date of death (for Decedent Estates) or the date the fiduciary received their Letters of Authority (for Conservatorships and Guardianships of the Estate for an Individual with Developmental Disabilities).

For real estate, use any of the following methods: (1) two times the State Equalized Value (SEV), (2) a value based on a full narrative appraisal by a licensed appraiser within one year of the date of death, or (3) a sales price if the property was sold within one year of the date of death.

If you use an appraisal for any item(s), include a copy of the appraisal with the Inventory.

List the amount and type of any mortgage, lien, or encumbrance on any particular asset.

Is there a fee for filing an Inventory?

For Decedent Estates – Yes.

For Conservatorships and Guardianships of Estates of Individuals with Developmental Disabilities – No.

Important Note #1: No deduction is allowed for any mortgage, lien or encumbrance on any asset. Please note that this law may change.

Important Note #2: The inventory fee must be paid within one year of the date the Personal Representative received their Letters of Authority or the filing of a Sworn Statement to Close Administration or Petition for Complete Estate Settlement, whichever is earlier.

The inventory fee for Decedent Estates is based on the value of the property pursuant to a schedule according to Michigan law.

Note: Fees can be paid by cash, check, or money order payable to the Tuscola County Probate Court. No credit cards, debit cards, or out of state checks are accepted.

Who has to receive copies of an Inventory?

The interested persons for the particular type of case. See the initial petition filed in your proceeding for more information.

**CLOSING PROCEDURES -
GUARDIANSHIP FOR AN INDIVIDUAL
WITH A DEVELOPMENTAL DISABILITY**

Note: The Court is prohibited by law from providing legal advice. This item provides general information concerning the closing procedures for a guardianship for an individual with a developmental disability and may be useful as a guide.

If you have any questions, consider reviewing the [Guardianship for an Individual with a Developmental Disability](#) heading under the Frequently Asked Question (FAQ) section of the website, contacting an attorney for assistance.

Closing upon Death of Ward: There is **no fee**. The guardian files a photocopy of the death certificate and the case is closed by the Court. A final form [PC 663](#), Report of Guardian on Condition of Individual with Developmental Disability, can also be filed with the death certificate but is not required.

Important Note: A partial guardianship for an individual with developmental disabilities **automatically closes** after five (5) years.

If you are a guardian of the estate (i.e., conservator), you must also file a final account.

The Following Procedures Apply to Attempting to Terminate a Guardianship for an Individual with a Developmental Disability Before the Ward's Death:

Filing Fee	None
Form(s) Used	PC 677 , Petition to Terminate\Modify Guardianship for Alleged Developmentally Disabled Individual
Who can File	Anyone interested in the welfare of the individual with developmental disabilities can file a petition to terminate the guardianship.
Interested Persons	Only list new interested persons and\or change of addresses for any interested persons since the guardianship was opened. If an interested person is not included or is not properly served, the hearing cannot be held.
Hearing Date	Your Petition will be set for hearing. Typically, the hearing date is 4-6 weeks after the petition is filed. Your Notice of Hearing displays the correct date, time, place, and assigned Judge. You, the Petitioner, must attend the hearing or your Petition will be dismissed.
Guardian ad Litem/ Attorney	The Court may appoint a Guardian ad Litem (GAL) to investigate the situation and make a recommendation to the court prior to the hearing. The GAL is not an employee of the court but a licensed practicing attorney assigned by the court.

ADMINISTRATIVE CLOSING OF GUARDIANSHIP CASES

In accordance with MCL 700.3951 and MCR 5.144, the Tuscola County Probate Court may administratively close a probate file. The Tuscola County Probate Court has implemented the following procedures to reopen an administratively closed file:

To reopen an administratively closed guardianship or conservatorship case, the fiduciary or any interested person must file a new Petition to Appoint Guardian or Petition to Appoint Conservator, and pay the filing fee of \$150.00. If the former Guardian or Conservator is reappointed, they may be ordered to file any missing documents (e.g. Annual Report on Condition of Ward, Account).

To obtain probate forms, click on the Forms tab.