

## Things to Know About Guardianship

This article on *Guardianship of an Adult* comes from the **Massachusetts Guardianship Association**, a non-profit organization which provides information and resources on Guardianship and Conservatorship. It is reprinted here with their generous permission. Read more at [www.massguardianshipassociation.org](http://www.massguardianshipassociation.org)

### 1. What is Guardianship of an Adult?

Guardianship is a legal proceeding and can be considered for an adult with a clinically diagnosed medical condition, where the adult has not previously signed a health Care Proxy, and is unable to make effective personal decisions about their every day self-care, health, and safety.

The Massachusetts court can step in to protect the incapacitated person and appoint a Guardian. The court can transfer some or all rights for personal decision making to the Guardian, limited to areas where the adult is impaired. The Guardian safeguards the adult's autonomy and arranges for appropriate care and services.

### 2. Who is an 'incapacitated person'?

The law defines an incapacitated person as an adult who has a clinically diagnosed medical condition that results in an inability to receive and evaluate information or make or communicate decisions. The adult lacks the ability to make some or all effective decisions about his or her everyday personal care, health and safety. In a Guardianship proceeding, if the court determines an adult is an incapacitated person, and that guardianship is appropriate, it may appoint a Guardian to advocate for the adult's rights and make personal and medical decisions on the adult's behalf.

### 3. What is a Limited Guardianship?

On July 1, 2009, the revised and modernized Guardianship law went into effect in Massachusetts. The goal of the revised law is to maximize the self-reliance and independence of adults with disabilities, while ensuring adults receive essential care for their health, safety, and well being.

A Limited Guardianship is favored under Massachusetts law and recognizes that an adult may lack the ability to make decisions in some areas, and still have the ability to make personal decisions in many other areas of his or her life. The court tailors the guardianship to preserve the adult's rights and liberties to the fullest extent, and limits the Guardian's decision making powers to areas where the adult can no longer make effective decisions.

### 4. Who can be appointed Guardian of an incapacitated person?

Any qualified adult can be appointed Guardian: a relative, a friend, a professional or an agency.

## 5. What does a Guardian do?

A Guardian makes personal and medical care decisions for an incapacitated adult only as necessary to protect the adult from harm according to the decision-making powers stated in the court's Decree and Order. A Guardian's duties generally include arranging for:

- A safe and appropriate (least restrictive) living situation
- Everyday basic needs and safety
- Ordinary medical treatment and doctor visits
- Social, educational, and recreational needs
- Application for health insurance and other benefits
- Payment of adult's expenses using the adult's income
- Future needs and expenses

A Guardian is required to consider the adult's expressed desires and personal values in decision-making and act in the adult's best interest, encourage the adult to participate in decision-making whenever possible, and help the adult develop or regain the capacity to manage his or her own personal affairs.

## 6. What is the difference between a Guardian and a Conservator?

A Guardian is appointed to make personal decisions on behalf of an incapacitated adult. A Conservator is appointed to make financial decisions regarding money, property, and business affairs on behalf of an impaired or incapacitated adult. A Guardian can receive moderate amounts of the incapacitated adult's money and apply it for the adult's care and support. If there is a substantial amount of money under the Guardian's control, or for example, a bank account to manage, the court may require a Conservator be appointed.

## 7. Who can petition the court for Guardianship?

Any person interested in the adult's welfare, or the adult, can file a Petition for Guardianship asking the court to appoint a Guardian. The Petitioner, the person who files the Petition, is often the same person who asks to be appointed Guardian. However, the Petitioner and Guardian can be two different people or agencies.

## 8. Where do I find more information and court forms?

The Massachusetts Guardianship Association (MGA) has free information on Guardianship. Additionally, the Massachusetts Probate and Family court offers guardianship information and resources on its website. [www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/upc.html](http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/upc.html)

**Read the full article and much more on the MGA website at**  
[www.massguardianshipassociation.org](http://www.massguardianshipassociation.org)