

# Understanding Guardianship

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If you are an adult child, one of the most painful moments in your lifetime may be realizing your mother or father is no longer able to safely care for themselves due to cognitive decline. Whether the cause is physical injury, Alzheimer's disease, an acute illness, or natural aging, the result is the same. It may be time to consider guardianship. I will provide some details about this process.

## What is Guardianship?

Guardianship is a court-appointed relationship between a competent adult (the "Guardian") and an individual considered unable to handle their affairs (the "Incapacitated Person" or "IP"). When a guardian is appointed, the court gives the Guardian authority to handle certain legal rights of the IP and removes those rights from the IP. The extent of the authority granted to the Guardian will depend on the IP's needs. The court is required to use the least restrictive means possible to ensure the IP's safety. Therefore, if the IP is still capable of handling some of their affairs, the Guardian's authority will be tailored accordingly.

## Types of Guardians

In Massachusetts, several types of Guardians are recognized, including:

**General Guardian** – responsible for ALL personal and medical decisions of the IP's life. The Guardian assures that the IP

has a place to live, food to eat, proper clothing, and other necessities, as well as medical treatment, schooling, vocational opportunities, and other needed services.

**Limited Guardian** – has the authority to make decisions ONLY in specific areas of the IP's life, such as major medical decisions or residential location and needs. The court's order will identify these areas.

**Emergency or Temporary Guardian** – may be appointed in situations where immediate action is required to prevent harm to the IP. An emergency guardianship CANNOT be in effect longer than 90 days and has ONLY the authority identified by the court at the time of the appointment.

**Note:** A Guardian is not responsible for the IP's assets nor for managing the financial affairs of the IP. In MA, a Conservator is appointed to manage and protect the estate of an incapacitated individual. You can, however, petition to be both a Conservator and a Guardian.

### **Petitioning for Guardianship**

To become your parent's Guardian, you must first file a petition for guardianship in the appropriate court. You are required to notify the IP, as well as immediate family members and a spouse, of your filing. The court may conduct its own investigation in an attempt to determine the need for a Guardian. Ultimately, the court will set the matter for a hearing at which time you will need to present sufficient evidence of the need for a Guardian to convince the judge to grant your petition. You will also need to convince the judge that you are the right person to grant as the Guardian. If the judge agrees with you, your petition for guardianship will be allowed and the judge will explain the authority you are being granted and any limitations to that authority.

The process of obtaining a Guardianship is costly, public, and time consuming and can be avoided by planning ahead and having

appropriate estate planning documents in place prior to issues arising. Every individual should execute foundational estate planning documents, including a durable power of attorney, health care proxy, HIPAA release, personal directive, and last will and testament. By executing these documents, you choose who you want to make decisions for you if you are unable to make them yourself. Savings your family money and frustration. Call a qualified elder law attorney today.

*The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.*