

# CSP SUPPLEMENTAL MATERIALS

- A. ART Materials
  - A-1 Repeal of the Michigan Surrogate Parenting Act
  - A-2 Proposed Gestational Carrier Contracts Act
- B. Web version of Brochures
  - B-1 Guardianships
  - B-2 Conservatorships
  - B-3 Durable Powers of Attorney
  - B-4 Patient Advocate Designations

A-1

The Committee recommends repeal of the Michigan Surrogate Parenting Act.

## **MICHIGAN SURROGATE PARENTING ACT**

### **Act 199 of 1988**

#### **MCL 722.851 Short title.**

This act shall be known and may be cited as the “surrogate parenting act”.

#### **MCL 722.853 Definitions.**

As used in this act:

(a) “Compensation” means a payment of money, objects, services, or anything else having monetary value except payment of expenses incurred as a result of the pregnancy and the actual medical expenses of a surrogate mother or surrogate carrier.

(b) “Developmental disability” means that term as defined in the mental health code, Act No. 258 of the Public Acts of 1974, being sections 330.1001 to 330.2106 of the Michigan Compiled Laws.

(c) “Mental illness” means that term as defined in the mental health code, Act No. 258 of the Public Acts of 1974.

(d) “Mentally retarded” means that term as defined in the mental health code, Act No. 258 of the Public Acts of 1974.

(e) “Participating party” means a biological mother, biological father, surrogate carrier, or the spouse of a biological mother, biological father, or surrogate carrier, if any.

(f) “Surrogate carrier” means the female in whom an embryo is implanted in a surrogate gestation procedure.

(g) “Surrogate gestation” means the implantation in a female of an embryo not genetically related to that female and subsequent gestation of a child by that female.

(h) “Surrogate mother” means a female who is naturally or artificially inseminated and who subsequently gestates a child conceived through the insemination pursuant to a surrogate parentage contract.

(i) “Surrogate parentage contract” means a contract, agreement, or arrangement in which a female agrees to conceive a child through natural or artificial insemination, or in which a female agrees to surrogate gestation, and to voluntarily relinquish her parental or custodial rights to the child. It is presumed that a contract, agreement, or arrangement in which a female agrees to conceive a child through natural or artificial insemination by a person other than her husband, or in which a female agrees to surrogate gestation, includes a provision, whether or not express, that the female will relinquish her parental or custodial rights to the child.

#### **MCL 722.855 Surrogate parentage contract as void and unenforceable.**

A surrogate parentage contract is void and unenforceable as contrary to public policy.

#### **MCL 722.857 Surrogate parentage contract prohibited; surrogate parentage contract as felony; penalty.**

(1) A person shall not enter into, induce, arrange, procure, or otherwise assist in the formation of a surrogate parentage contract under which an unemancipated minor female or a female diagnosed as being mentally retarded or as having a mental illness or developmental disability is the surrogate mother or surrogate carrier.

(2) A person other than an unemancipated minor female or a female diagnosed as being mentally retarded or as having a mental illness or developmental disability who enters into, induces, arranges, procures, or otherwise assists in the formation of a contract described in subsection (1) is guilty of a felony punishable by a fine of not more than \$50,000.00 or imprisonment for not more than 5 years, or both.

**MCL 722.859 Surrogate parentage contract for compensation prohibited; surrogate parentage contract for compensation as misdemeanor or felony; penalty.**

(1) A person shall not enter into, induce, arrange, procure, or otherwise assist in the formation of a surrogate parentage contract for compensation.

(2) A participating party other than an unemancipated minor female or a female diagnosed as being mentally retarded or as having a mental illness or developmental disability who knowingly enters into a surrogate parentage contract for compensation is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00 or imprisonment for not more than 1 year, or both.

(3) A person other than a participating party who induces, arranges, procures, or otherwise assists in the formation of a surrogate parentage contract for compensation is guilty of a felony punishable by a fine of not more than \$50,000.00 or imprisonment for not more than 5 years, or both.

**MCL 722.861 Custody of child.**

If a child is born to a surrogate mother or surrogate carrier pursuant to a surrogate parentage contract, and there is a dispute between the parties concerning custody of the child, the party having physical custody of the child may retain physical custody of the child until the circuit court orders otherwise. The circuit court shall award legal custody of the child based on a determination of the best interests of the child. As used in this section, "best interests of the child" means that term as defined in section 3 of the child custody act of 1970, Act No. 91 of the Public Acts of 1970, being section 722.23 of the Michigan Compiled

A-2

# SENATE BILL No. 811

February 23, 2016, Introduced by Senators WARREN and BIEDA and referred to the Committee on Families, Seniors and Human Services.

A bill to establish gestational surrogate parentage contracts; to allow gestational surrogate parentage contracts for compensation; to provide for a child conceived, gestated, and born according to a gestational surrogate parentage contract; to provide for penalties and remedies; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "gestational surrogate parentage act".

3           Sec. 3. As used in this act:

4           (a) "Compensation" means a payment of money, objects,  
5 services, or anything else having monetary value except payment of  
6 expenses incurred as a result of the pregnancy and the actual  
7 medical expenses of a surrogate mother or surrogate carrier.

8           (b) "Developmental disability" means that term as defined in

1 section 100a of the mental health code, 1974 PA 258, MCL 330.1100a.

2 (c) "Gestational surrogate parentage contract" means a  
3 contract, agreement, or arrangement in which a female agrees to  
4 gestate a child that is not genetically related to her and  
5 voluntarily relinquish her parental or custodial rights to the  
6 child.

7 (d) "Intellectually disabled" means intellectual disability as  
8 that term is defined in section 100b of the mental health code,  
9 1974 PA 258, MCL 330.1100b.

10 (e) "Mental health professional" means that term as defined in  
11 section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

12 (f) "Mental illness" means that term as defined in section 400  
13 of the mental health code, 1974 PA 258, MCL 330.1400.

14 (g) "Participating party" means a biological parent, surrogate  
15 carrier, or the spouse of a biological parent, or surrogate  
16 carrier, if any.

17 (h) "Physician" means an individual licensed under article 15  
18 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838,  
19 to engage in the practice of medicine.

20 (i) "Surrogate carrier" means the female in whom an embryo is  
21 implanted in a surrogate gestation procedure.

22 (j) "Surrogate gestation" means the implantation in a female  
23 of an embryo not genetically related to that female and subsequent  
24 gestation of a child by that female.

25 (k) "Surrogate mother" means a female who is naturally or  
26 artificially inseminated and who subsequently gestates a child  
27 conceived through the insemination according to a gestational

1 surrogate parentage contract.

2       Sec. 5. (1) If the provisions of section 7 are met, a  
3 gestational surrogate parentage contract is enforceable under the  
4 provisions of this act.

5       (2) If the provisions of section 7 are met, a person may enter  
6 into, arrange, procure, or otherwise assist in the formation of a  
7 surrogate parentage contract, whether or not compensation is  
8 provided.

9       (3) It is presumed that a contract, agreement, or arrangement  
10 in which an individual agrees to conceive a child through natural  
11 or artificial insemination by a person other than their spouse, or  
12 in which an individual agrees to surrogate gestation, includes a  
13 provision, whether or not express, that the individual will  
14 relinquish their parental or custodial rights to the child.

15       Sec. 7. Before a gestational surrogate parentage contract can  
16 be considered valid under this act, all of the following must  
17 occur:

18       (a) Before the gestational surrogate parentage contract is  
19 written, the surrogate carrier must submit to psychological testing  
20 to ensure that there is informed consent.

21       (b) The surrogate carrier must obtain a statement from a  
22 physician that states that the surrogate carrier is in good  
23 physical health.

24       (c) All parties to the gestational surrogate parentage  
25 contract must obtain a statement from a mental health professional  
26 that states that the parties are in good mental health.

27       (d) The parties must petition the court for approval of the



1 contract in order for the contract to be valid and enforceable.  
2 Information provided to the court under this subdivision,  
3 including, but not limited to, the names of the parties and the  
4 contents of the contract, shall not be released to the public  
5 unless all parties to the contract provide written authorization to  
6 the court for release of the information.

7       Sec. 9. (1) A person shall not enter into, induce, arrange,  
8 procure, or otherwise assist in the formation of a gestational  
9 surrogate parentage contract under which an unemancipated minor  
10 female or a female diagnosed as being intellectually disabled or as  
11 having a mental illness or developmental disability is the  
12 surrogate mother or surrogate carrier.

13       (2) A person other than an unemancipated minor female or a  
14 female diagnosed as being intellectually disabled or as having a  
15 mental illness or developmental disability who enters into,  
16 induces, arranges, procures, or otherwise assists in the formation  
17 of a contract described in subsection (1) is guilty of a felony  
18 punishable by a fine of not more than \$50,000.00 or imprisonment  
19 for not more than 5 years, or both.

20       Sec. 11. If a child is born to a surrogate carrier pursuant to  
21 a surrogate parentage contract and there is a dispute between the  
22 parties concerning custody of the child, the party having physical  
23 custody of the child may retain physical custody of the child until  
24 the circuit court orders otherwise. The circuit court shall award  
25 legal custody of the child based on a determination of the best  
26 interests of the child. As used in this section, "best interests of  
27 the child" means that term as defined in section 3 of the child

1 custody act of 1970, 1970 PA 91, MCL 722.23.

2 Enacting section 1. The surrogate parenting act, 1988 PA 118,  
3 MCL 400.851 to 400.76 to 400.863, is repealed.

4 Enacting section 2. This act takes effect 90 days after the  
5 date it is enacted into law.

B-1



## PROBATE INFORMATION

### Guardianship—Acting for Adults Who Become Disabled

- Appointing a Guardian
- Compensation
- Powers & Duties
- Modification & Termination
- Obtaining Legal Assistance

### Conservatorship—Acting for Adults Who Become Disabled

- Appointing a Conservator
- Compensation
- Powers & Duties
- Modification & Termination
- Obtaining Legal Assistance

### Durable Power of Attorney

- Frequently Asked Questions

### Designating Someone to Make Medical Decisions

- Patient Advocate Designation

## Probate Information Guardianship—Acting for Adults Who Become Disabled

Provided by the [Probate & Estate Planning Section of the State Bar of Michigan](#)

The following explains Michigan guardianship for a formerly competent adult who loses the ability to take care of him or her self or property. A person who loses this ability is called "incapacitated." When an incapacitated person lacks the understanding or ability to make or communicate informed decisions, the individual may need the help of a guardian or conservator. If the incapacitated person has a Durable Power of Attorney or a Designation of Patient Advocate, then a guardian and/or conservator may not be necessary. A guardian takes care of an incapacitated adult's personal needs. A conservator takes care of an incapacitated adult's property (see [Conservatorship](#)). One person can be both the guardian and the conservator for an incapacitated adult. A guardianship or conservatorship will limit an incapacitated adult's legal right to handle his or her own matters and can cost the incapacitated adult time and money.

If an individual has a disabling condition that began before the age of 22, and the condition is likely to continue indefinitely, then a guardian is appointed under a different set of laws. The following information does not address that type of guardianship.



## Contents

- [How a Guardian is Appointed](#)
- [Guardian Compensation](#)
- [Powers & Duties of a Guardian](#)
- [Modification or Termination](#)
- [Obtaining Legal Assistance](#)
- Related Topic: [Conservatorship](#)

## How a Guardian is Appointed

A guardian is appointed by the probate court at the request of a concerned person (petitioner) and after a hearing is held to consider the request. To make a request to the court, a concerned person must file a request on a legal document called a petition.

### Where is the Petition Filed?

The petition must be filed in the probate court in the county where the individual lives or is located.

### Who Can File a Petition for Guardianship?

The incapacitated individual, or a person interested in the welfare of the incapacitated individual, may file the petition. The petition states details about why a guardian is needed. The person that files the petition is known as the "petitioner."

### What Happens Next?

The probate court clerk schedules a hearing date for a judge to consider the petition. The petitioner must deliver copies of the petition to certain people before the hearing date. Michigan Court Rules require that this be done in a certain way.

The court will appoint a guardian ad litem to represent the incapacitated individual, unless the individual has his or her own attorney. Before the hearing date, the court may also order the individual to be examined by a physician or mental health professional and to submit a report to the court about the individual's condition.

### Who Gets Copies of the Hearing Notice and Petition?

The petitioner will make sure the incapacitated individual is personally given a copy of the petition and a notice of the hearing. The petitioner will also mail copies of the petition and notice of the hearing to certain people (called "interested persons"). These people are 1) the individual's spouse, 2) a person named as the individual's agent in a durable power of attorney, 3) the individual's children (or, if the individual has no children, the individual's parents), and 4) if there is one, the individual's guardian or conservator appointed by a court in another state. The incapacitated individual and these interested persons are entitled to object to the appointment of a guardian.

***What Does a Guardian Ad Litem Do?***

The guardian ad litem will personally visit the incapacitated individual and explain certain things, including what has been requested in the petition, the incapacitated individual's rights, and what can happen at the hearing. The guardian ad litem will also ask the individual what he or she wants the court to do about the petition. The guardian ad litem will tell the individual the name of the person who requested the guardianship and who might be appointed as a guardian.

***Does the Court Investigate the Facts Stated in the Petition?***

The court may appoint someone to investigate the facts in the petition before the hearing date. This person can be the guardian ad litem, or it can be a physician or mental health professional. This person will submit a full report to the court, including what he or she recommends for the individual.

***What Happens at the Hearing?***

At the hearing on the petition, the judge will determine whether a guardianship is needed. The judge must find by clear and convincing evidence two things: (1) the individual lacks the understanding or capacity to make or communicate informed decisions, and (2) the appointment of a guardian is necessary to provide for the individual's continuing care and supervision.

If the incapacitated individual needs a guardian, the judge will select (appoint) a suitable guardian who is willing to serve. If the individual needs a guardian but has some ability to take care of certain tasks, the judge may appoint a limited guardian to take care of only those things that the individual cannot.

***Who May Serve as a Guardian?***

Any competent person may be appointed as a guardian. The person must be over age 18, suitable, and willing to serve. The law provides who has priority for appointment as guardian, which includes: the guardian appointed in another state for this individual, a person nominated by this individual, the person nominated in this individual's durable power of attorney, a person nominated by this individual as a patient advocate in a Designation of Patient Advocate. A judge may reject anyone to serve as guardian if the judge finds the nominated person unsuitable. The judge will appoint a professional guardian only if there is no one suitable from the above list of people.

***What Happens if the Incapacitated Individual Does Not Want the Guardianship?***

If the incapacitated individual does not agree to a guardianship, the court must appoint an attorney to represent the incapacitated individual and a contested hearing is set. The court must pay for the attorney if the individual cannot afford to pay for the attorney.

***When Does the Guardian Have Authority?***

The appointed guardian's responsibilities and authority start when he or she files with the court a signed document called an "Acceptance of Appointment."

## **Guardian Compensation**

A guardian may be paid for their services from the incapacitated individual's assets. The payment amount depends upon the time spent by the guardian, the nature of services provided, the amount of available funds, and the individual's specialized needs. The court will only approve just and reasonable payment.

**Next >>**  
**Powers & Duties**

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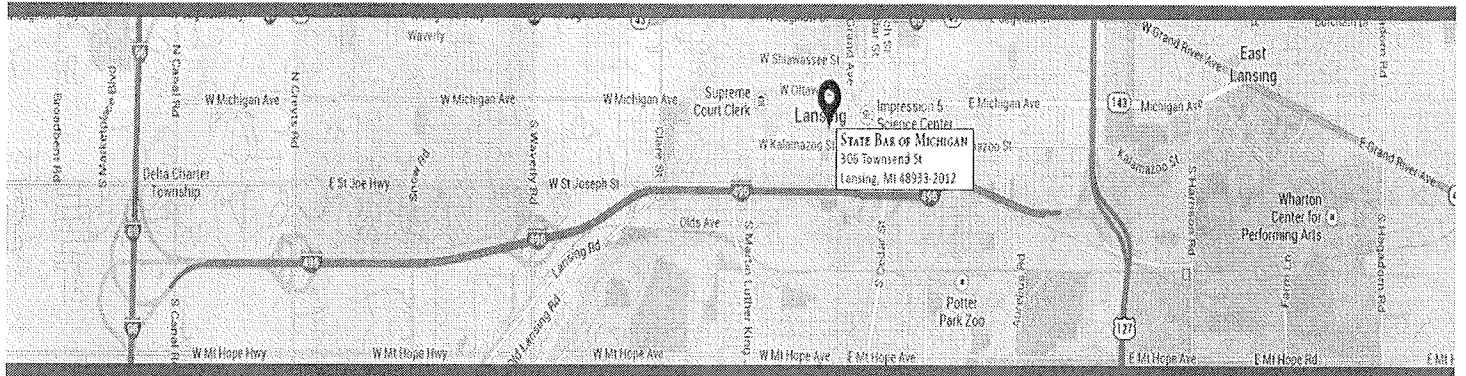
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- [For Public](#)
- [Admissions](#)
- [News & Events](#)
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PROBATE INFORMATION

**Guardianship—Acting for Adults Who Become Disabled**

- Appointing a Guardian
- Compensation
- Powers & Duties
- Modification & Termination
- Obtaining Legal Assistance

**Conservatorship—Acting for Adults Who Become Disabled**

- Appointing a Conservator
- Compensation
- Powers & Duties
- Modification & Termination
- Obtaining Legal Assistance

**Durable Power of Attorney**

- Frequently Asked Questions

**Designating Someone to Make Medical Decisions**

- Patient Advocate Designation

## Probate Information Guardianship—Acting for Adults Who Become Disabled

Provided by the *Probate & Estate Planning Section of the State Bar of Michigan*

### Contents

- [How a Guardian is Appointed](#)
- [Compensation](#)
- [Powers & Duties](#)
- [Modification or Termination](#)
- [Obtaining Legal Assistance](#)
- Related Topic: [Conservatorship](#)



### Powers & Duties of a Guardian

A full guardian is responsible for the individual's care, custody, and supervision. This means that the guardian will make sure that: 1) the individual has proper food and clothing, 2) the individual lives in a place that is appropriate for him or her, 3) the individual's medical needs are met, and 4) the individual's property is safe. A limited guardian is responsible for only those duties stated in the court order.

***Does the Guardian Make Medical Decisions for the Incapacitated Individual?***

If the incapacitated individual has a valid patient advocate designation and the patient advocate is properly acting in the best interests of the patient, the patient advocate will continue to make medical decisions for the individual. Otherwise, the guardian will make the medical decisions.

***Is the Guardian Liable for Any Wrong Done by the Incapacitated Individual?***

The guardian is not liable to other people for any action of the incapacitated individual.

***What Kind of Reports Does the Guardian File With the Court?***

The guardian must visit the individual at least quarterly. At least once a year, the guardian must prepare a report on the condition of the incapacitated individual and file the report with the probate court. The guardian must give copies of the report to the incapacitated individual and all interested persons as defined by Michigan Court Rule.

***How Does a Guardian Provide for the Disabled Individual's Needs?***

If a conservator is not appointed, the guardian may take control of and manage the incapacitated person's funds and property for the benefit of the individual. The funds or property are used for the individual's support, care, and education. Any amount not used is saved for the individual's needs.

***Can a Hospital or Nursing Home Ask a Guardian to Sign a Do-Not-Resuscitate Order for the Incapacitated Individual?***

Generally, yes, as long as the incapacitated individual does not object. There is a specific procedure limiting when and how a guardian may do this.

**<< Back**  
Guardianship

**Next >>**  
Modification &  
Termination; Legal  
Assistance

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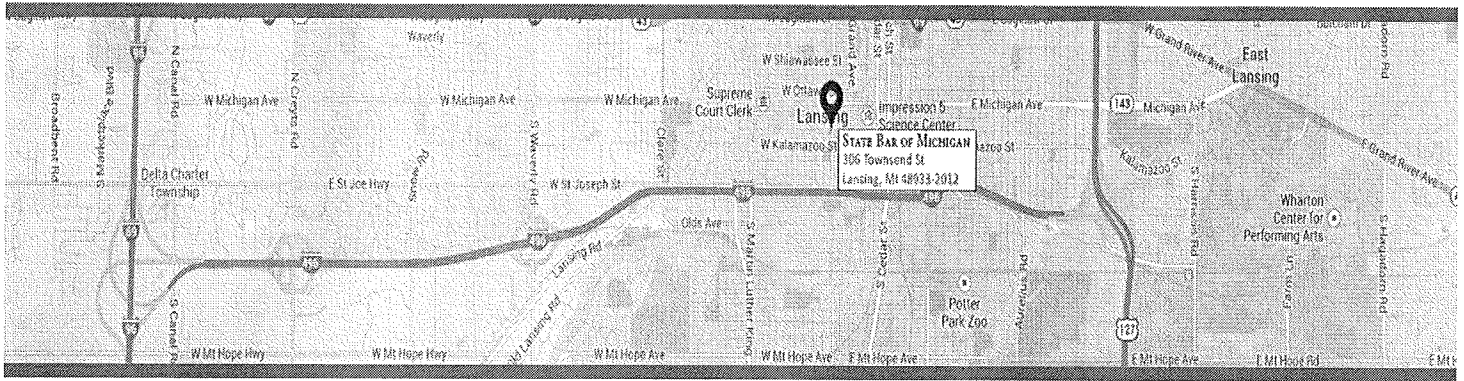
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- [Admissions](#)
- [News & Events](#)
- [Publications](#)

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PROBATE INFORMATION

**Guardianship—Acting for Adults Who Become Disabled**

- Appointing a Guardian
- Compensation
- Powers & Duties
- Modification & Termination
- Obtaining Legal Assistance

**Conservatorship—Acting for Adults Who Become Disabled**

- Appointing a Conservator
- Compensation
- Powers & Duties
- Modification & Termination
- Obtaining Legal Assistance

**Durable Power of Attorney**

- Frequently Asked Questions

**Designating Someone to Make Medical Decisions**

- Patient Advocate Designation

**Probate Information  
Acting for Adults Who Become Disabled**

*Provided by the Probate & Estate Planning Section of the State Bar of Michigan*

**Contents**

**Guardianship for Disabled Adults**

- [How a Guardian is Appointed](#)
- [Guardian Compensation](#)
- [Powers & Duties of a Guardian](#)
- [Guardianship can be Modified or Terminated](#)
- [Obtaining Legal Assistance](#)

**Conservatorship for Disabled Adults**

- [How a Conservator is Appointed](#)
- [Conservator Compensation](#)
- [Powers & Duties of a Conservator](#)
- [Conservatorship can be Modified or Terminated](#)
- [Obtaining Legal Assistance](#)



**Guardianship & Conservatorship can be Modified or Terminated**

The individual or any interested person may petition the court to modify or end a guardianship or conservatorship. The court may also change a guardian or conservator's powers.

**Obtaining Legal Assistance**

Serving as a guardian or conservator requires technical expertise. Often, it is necessary to retain the services of an attorney, accountant, bank trust department, investment counselor, family counselor, or other professional. Since the professional's proposed fee is paid from the assets of the individual, the probate court must approve any amount paid to professionals. Guardians and conservators must monitor the work of those they hire to provide services to or for the incapacitated or protected individual. The probate court clerks cannot provide legal advice, but there are helpful packets of information available for purchase at the probate court counter.

[<< Back](#)  
[Guardianship](#)

[<< Back](#)  
[Conservatorship](#)

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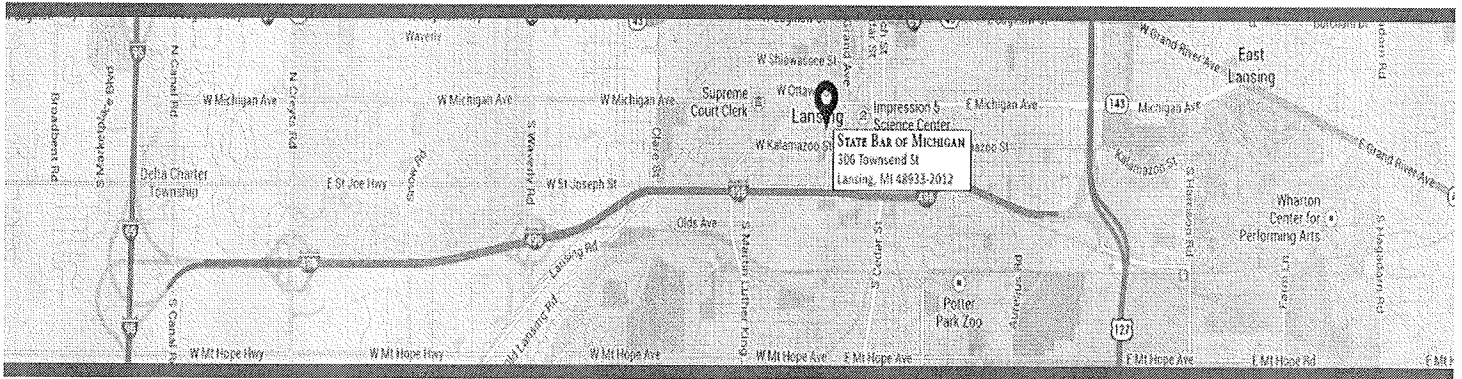
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- [Admissions](#)
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B-2



PROBATE INFORMATION

**Guardianship—Acting for Adults Who Become Disabled**

- Appointing a Guardian
- Compensation
- Powers & Duties
- Modification & Termination
- Obtaining Legal Assistance

**Conservatorship—Acting for Adults Who Become Disabled**

- Appointing a Conservator
- Compensation
- Powers & Duties
- Modification & Termination
- Obtaining Legal Assistance

**Durable Power of Attorney**

- Frequently Asked Questions

**Designating Someone to Make Medical Decisions**

- Patient Advocate Designation

**Probate Information  
Conservatorship—Acting for Adults Who Become Disabled**

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The following explains Michigan conservatorship for a formerly competent adult who loses the ability to take care of him or her self or property. A person who loses this ability is called "incapacitated." When an incapacitated person lacks the understanding or ability to make or communicate informed decisions, the individual may need the help of a guardian or conservator. If the incapacitated person has a Durable Power of Attorney or a Designation of Patient Advocate, then a guardian and/or conservator may not be necessary. A guardian takes care of an incapacitated adult's personal needs (see [Guardianship](#)). A conservator takes care of an incapacitated adult's property. One person can be both the guardian and the conservator for an incapacitated adult. A guardianship or conservatorship will limit an incapacitated adult's legal right to handle his or her own matters and can cost the incapacitated adult time and money.



If an individual has a disabling condition that began before the age of 22, and the condition is likely to continue indefinitely, then a guardian is appointed under a different set of laws. The following information does not address that type of guardianship.

**Contents**

- [How a Conservator is Appointed](#)
- [Conservator Compensation](#)
- [Powers & Duties of a Conservator](#)
- [Modification or Termination](#)
- [Obtaining Legal Assistance](#)
- Related Topic: [Guardianship](#)

**How a Conservator is Appointed**

A conservator is appointed in three steps. **First**, an appropriate person called "the petitioner" properly files a petition at the probate court. "Petition" is the legal name for the document that must be filed to start a probate court proceeding. The person for whom a conservatorship is sought is called the "respondent." If a conservatorship is granted, then the person under conservatorship is called a "protected individual." The probate court clerk sets a hearing date. The petitioner timely delivers copies of the petition to certain "interested persons," according to the court rules. **Second**, the court investigates facts and determines whether the individual requires a court-appointed attorney. **Third**, at a hearing, the judge determines whether a conservatorship is necessary. If it is necessary, the judge selects a suitable conservator who is willing to serve. The conservator's responsibilities and authority begin once the person who is appointed files a bond as directed by the court.

***When is a Conservatorship necessary?***

A conservatorship may be necessary if an individual is unable to manage his or her property or business affairs. If the court can provide protection and management of the individual's money, property, and business affairs without a full conservatorship, then it will do so.

***Who can Petition for Conservatorship?***

Certain mentally competent persons may petition the court for a conservator for themselves. In addition, anyone interested in an individual's estate, affairs, or welfare may petition for conservatorship. Also, anyone who would be negatively affected by ineffective management of the individual's property or business affairs may petition for conservatorship.

***Where is the Petition Filed?***

The petition must be filed in the probate court in the county where the individual resides, or in the county in Michigan where the individual's property is located if the individual does not reside in Michigan.

***Who gets Copies of the Hearing Notice and Petition?***

The petitioner must arrange for the individual who is the subject of the petition to be personally served a copy of the petition and hearing notice. Copies must be given to his or her presumptive heirs; an individual's agent (an attorney in fact) under a durable

power of attorney; the nominated conservator; a government agency paying benefits like Medicaid or Social Security Disability Income to the individual, or to that government agency if the individual filed an application for benefits and is waiting for a response; and the U.S. Administrator of Veterans' Affairs if the individual is receiving or entitled to VA benefits.

#### ***How Does the Court Investigate the Relevant Facts?***

If a mentally competent person who needs a conservator files a petition for conservatorship, then the court need not appoint a guardian ad litem. If a petitioner alleges that the subject of the petition is not competent, the court shall appoint a guardian ad litem to investigate. A "guardian ad litem" is not the same as the guardian. The guardian ad litem must investigate the claims made in the petition. The guardian ad litem will make recommendations and submit a full report to the court.

#### ***What Happens at the Hearing?***

If a mentally competent person who needs a conservator and all interested persons consent, then the court may grant the petition without a hearing or the court may conduct a hearing. Ordinarily, the purpose of the hearing is to determine on the court's record that two things have occurred: (1) the individual is unable to manage property and business affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance, and (2) the individual has property that will be wasted or dissipated unless proper management is provided, or money is needed for the individual's support, care, and welfare or for those entitled to the individual's support, and that protection is necessary to obtain or provide proper support from the individual's resources. This can be done on the basis of the allegations in the petition, if the petition is unopposed at the time of the hearing.

#### ***Who May Serve as Conservator?***

The judge may appoint any competent person over age 18 or a professional conservator to serve. If the individual resides elsewhere and has a conservator appointed in another state, the court may appoint the conservator in the other state to act in Michigan. In all other cases, any of the following people may be appointed as conservator in the following priority: the person or entity nominated by the individual (including a person or entity nominated in a durable power of attorney); the individual's spouse, adult child, parent, relative with whom the individual has lived for more than six months; or a person nominated by the person who is caring for or paying benefits to the protected individual. The judge follows this order of priority when selecting a conservator; however, the judge may only appoint a person who is suitable and willing to serve. A conservator, spouse, adult child, parent, or relative with whom the individual has lived for more than six months may designate in writing a substitute person to serve instead. That written designation transfers the priority to the substitute person. If some people have equal priority (adult children, for example), then the judge chooses whomever he or she considers the best qualified to serve. The judge may pass over a person with priority and choose a person with lower priority, or no priority at all, to protect the individual who is the subject of the petition, if it is in the individual's best interest to do so.

#### ***What Happens if the Disabled Individual Disagrees with the Petition for Conservatorship?***

If the individual does not agree to the proposed conservatorship, then the judge must appoint an attorney to represent the individual to contest the proposed conservatorship unless the individual retains counsel of their own choosing. If counsel is appointed the court will direct payment for appointed counsel from the assets of the protected person.

## **Conservator Compensation**

A conservator is entitled to just and reasonable compensation for services. In approving a conservator's fee, the court will usually consider time spent by the conservator, professional expertise and required skill, nature, number, and complexity of assets, makeup of parties interested in the conservatorship, extent of the responsibilities and risks assumed, and the results obtained in administering the property.

**Next >>**  
**Powers & Duties**

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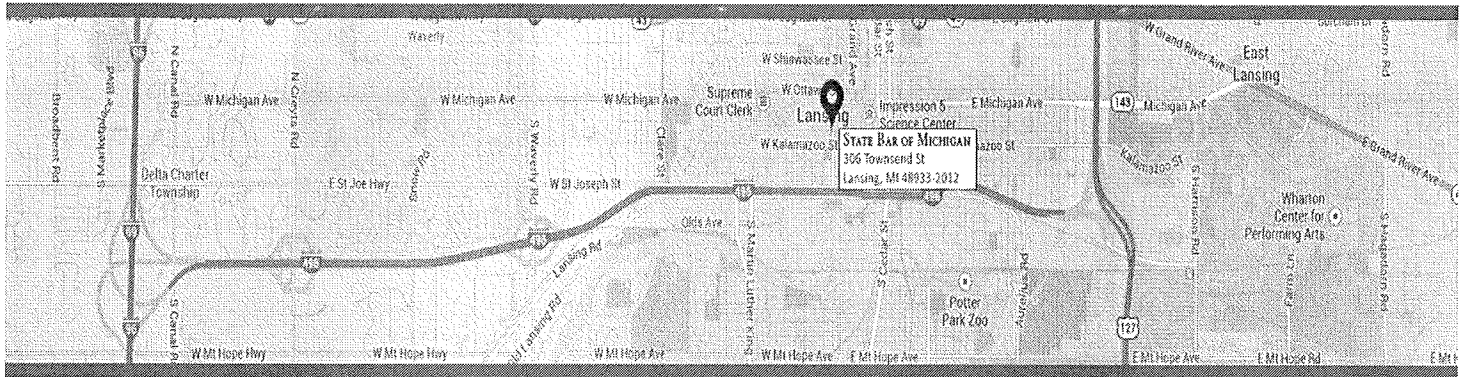
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PROBATE INFORMATION

**Guardianship—Acting for Adults Who Become Disabled**

- Appointing a Guardian
- Compensation
- Powers & Duties
- Modification & Termination
- Obtaining Legal Assistance

**Conservatorship—Acting for Adults Who Become Disabled**

- Appointing a Conservator
- Compensation
- Powers & Duties
- Modification & Termination
- Obtaining Legal Assistance

**Durable Power of Attorney**

- Frequently Asked Questions

**Designating Someone to Make Medical Decisions**

- Patient Advocate Designation

**Probate Information  
Conservatorship—Acting for Adults Who Become Disabled**

Provided by the [Probate & Estate Planning Section of the State Bar of Michigan](#)

**Contents**

- [How a Conservator is Appointed](#)
- [Conservator Compensation](#)
- [Powers & Duties of a Conservator](#)
- [Modification or Termination](#)
- [Obtaining Legal Assistance](#)
- Related Topic: [Guardianship](#)



**Powers & Duties of a Conservator**

A conservator is responsible for the collection, preservation, and investment of the individual's property and must use the property for the support, care, and benefit of the individual and his or her dependents. A conservator has a duty of loyalty and may not use any of the individual's assets for his or her own personal benefit. The court typically requires the filing of a fiduciary bond.

***Is the Conservator Required to Review the Individual's Records?***

Yes, the conservator must promptly file an inventory of the individual's property with the court and deliver copies to the individual and other parties as required by court rule. Doing so requires a detailed review of how the individual's assets are held.

***Is the Conservator Allowed to Make Gifts from the Individual's Estate?***

Some courts restrict gifting. If the estate is more than sufficient to provide for the individual's financial needs, then gifts less than twenty percent of annual income may be made to charities or other individuals in a manner that the individual might have been expected to make. The court and the conservator must consider the individual's estate plan in making investments and gifts.

***Is the Conservator Required to Report to the Court on an Ongoing Basis?***

Within 56 days of appointment the conservator must file with the court a verified inventory detailing all of the assets of the individual's estate. Copies of the inventory must be given to the individual and the interested persons. The conservator must also file annual, verified accounts with the court and provide copies to the individual and other parties as required by the court rules. Accounts shall be set for hearing for approval or allowance at least once every three years. A hearing before a judge must be held if the individual or an interested party objects to or challenges the accuracy of the conservator's account. The conservator must maintain careful records, and all payments from the individual's funds or other property should be supported by proof of payment or a receipt with a note describing the purpose of the payment.

**<< Back**  
Conservatorship

**Next >>**  
Modification &  
Termination; Legal  
Assistance

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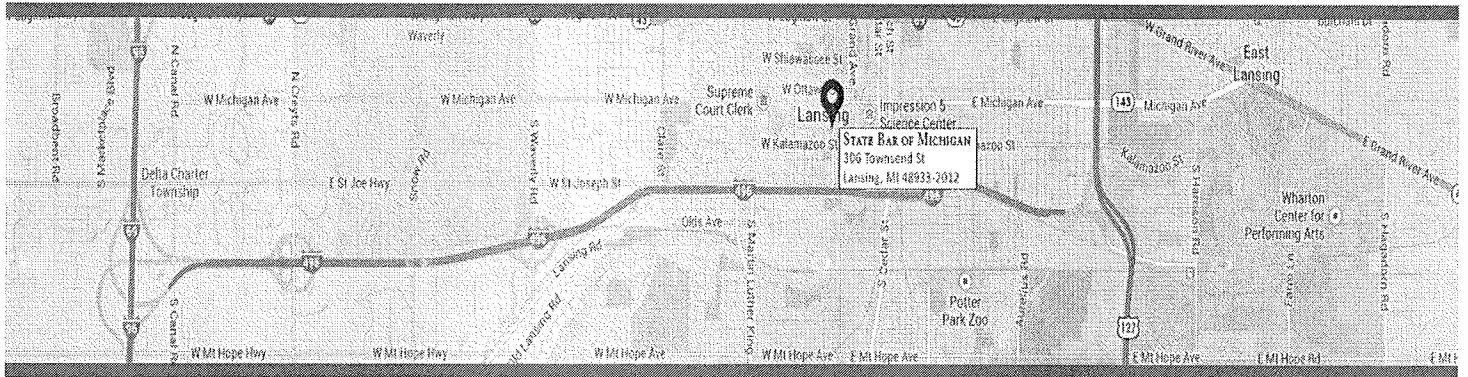
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- [Admissions](#)
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PROBATE INFORMATION

**Guardianship—Acting for Adults Who Become Disabled**

- Appointing a Guardian
- Compensation
- Powers & Duties
- Modification & Termination
- Obtaining Legal Assistance

**Conservatorship—Acting for Adults Who Become Disabled**

- Appointing a Conservator
- Compensation
- Powers & Duties
- Modification & Termination
- Obtaining Legal Assistance

**Durable Power of Attorney**

- Frequently Asked Questions

**Designating Someone to Make Medical Decisions**

- Patient Advocate Designation

**Probate Information  
Acting for Adults Who Become Disabled**

*Provided by the [Probate & Estate Planning Section of the State Bar of Michigan](#)*

**Contents**

**Guardianship for Disabled Adults**

- [How a Guardian is Appointed](#)
- [Guardian Compensation](#)
- [Powers & Duties of a Guardian](#)
- [Guardianship can be Modified or Terminated](#)
- [Obtaining Legal Assistance](#)

**Conservatorship for Disabled Adults**

- [How a Conservator is Appointed](#)
- [Conservator Compensation](#)
- [Powers & Duties of a Conservator](#)
- [Conservatorship can be Modified or Terminated](#)
- [Obtaining Legal Assistance](#)



**Guardianship & Conservatorship can be Modified or Terminated**

The individual or any interested person may petition the court to modify or end a guardianship or conservatorship. The court may also change a guardian or conservator's powers.

**Obtaining Legal Assistance**

Serving as a guardian or conservator requires technical expertise. Often, it is necessary to retain the services of an attorney, accountant, bank trust department, investment counselor, family counselor, or other professional. Since the professional's proposed fee is paid from the assets of the individual, the probate court must approve any amount paid to professionals. Guardians and conservators must monitor the work of those they hire to provide services to or for the incapacitated or protected individual. The probate court clerks cannot provide legal advice, but there are helpful packets of information available for purchase at the probate court counter.

[<< Back](#)  
[Guardianship](#)

[<< Back](#)  
[Conservatorship](#)

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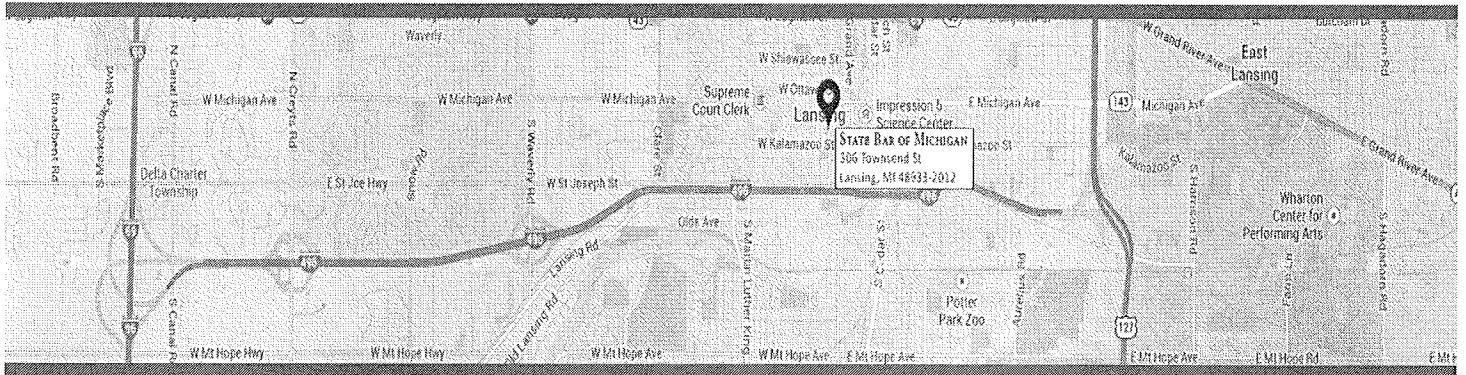
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- [For Public](#)
- [Admissions](#)
- [News & Events](#)
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B-3



PROBATE INFORMATION

**Guardianship—Acting for Adults Who Become Disabled**

- Appointing a Guardian
- Compensation
- Powers & Duties
- Modification & Termination
- Obtaining Legal Assistance

**Conservatorship—Acting for Adults Who Become Disabled**

- Appointing a Conservator
- Compensation
- Powers & Duties
- Modification & Termination
- Obtaining Legal Assistance

**Durable Power of Attorney**

- Frequently Asked Questions

**Designating Someone to Make Medical Decisions**

- Patient Advocate Designation

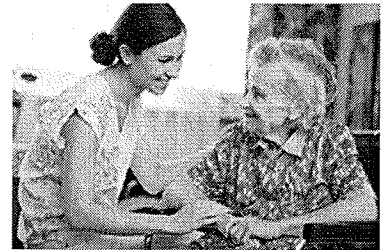
**Probate Information  
Durable Power of Attorney**

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**What is a Power of Attorney?**

A power of attorney is a document that allows you to give someone the authority to manage your financial affairs. This person is called your agent. Your agent can take care of your financial affairs as long as you are competent.

A "durable" power of attorney is a power of attorney that remains in effect when you are unable to make your own financial decisions (no longer competent). If you want your agent to have authority when you are unable to make your own financial decisions, your power of attorney document must be durable. This is done by adding a clause to the document that makes it clear that you intend for this power of attorney to remain effective after your subsequent disability, incapacity, or by the lapse of time.



**What can Your Agent do?**

An agent can:

1. sign your checks
2. make deposits for you
3. pay your bills
4. contract for medical or other professional services
5. sell your property
6. get insurance for you
7. do all the things you do to manage your everyday affairs

You can give your agent authority to do anything you could do. Or, you can limit your agent's authority to do only certain things, such as sell your home.

**How do I Make Sure My Durable Power of Attorney is Valid?**

You must sign the durable power of attorney before you become unable to do so (incapacitated) or it will not be valid. If you are incapacitated, it means you have a mental or physical condition that prevents you from taking care of your own financial affairs. You must sign your durable power of attorney in front of a notary or two witnesses. Also, your agent must sign an acknowledgement of responsibilities and duties before exercising authority. The law sets forth the language that must be included in an acknowledgement of responsibilities and duties.

**Why do I Need a Durable Power of Attorney if My Spouse and I Own Everything Jointly?**

If you and your spouse own a bank account jointly, then your spouse can sign checks and withdraw money from your joint bank accounts whether you are able to or not. However, the same is not true about your jointly owned stock or home. Your spouse needs your consent and signature in order to make changes to the legal title of your jointly owned home or stock. Your spouse does not have legal authority to name or change a beneficiary on your life insurance or retirement benefits either. To provide your consent and signature to these legal transactions after your disability or incapacity, your spouse must be named as your agent under a durable power of attorney.

**May I Make a Durable Power of Attorney That is Effective Immediately?**

Yes, a durable power of attorney may express your intent to make it effective immediately.

**Can I Make a Durable Power of Attorney That Becomes Effective Only if I Become Incapacitated?**

Yes, a durable power may express your intent to make it effective upon your disability or incapacity. You should also explain in the document how you would like your disability or incapacity determined.

**How Do I Cancel a Durable Power of Attorney?**

You can cancel (revoke) your durable power of attorney, but only when you are able (competent). You must sign a written document that says the durable power of attorney is revoked. You should sign the document in front of a notary public or two witnesses, but that is not required. Deliver your signed document to your agent and to anyone with whom your agent is dealing (for example, your bank).

**Whom Should I Name as My Agent?**

You may name any adult or a bank as your agent. You should have trust and confidence in whomever you select. Your agent should be willing to do this job for you.

**Can I Name More Than One Agent?**

You can name more than one agent to act at the same time. Include in your durable power of attorney whether the agents will act separately or as one. You should also name successor agents who will act if your agent becomes unavailable or unwilling to act on your behalf.

**What are the Agent's Duties?**

Your agent must follow your instructions and act in your best interest. The agent must keep receipts and accurate records about your assets. The agent must keep a record of the actions done on your behalf. If you ask your agent to keep you informed of his or her actions, then he or she must do so. If you ask your agent for an accounting, then your agent must provide you with one.

**What if My Agent Abuses the Authority?**

Anyone interested in your welfare can ask the probate court to get involved, cancel the durable power of attorney, and either appoint a conservator to handle your affairs or enter some other protective order on your behalf.

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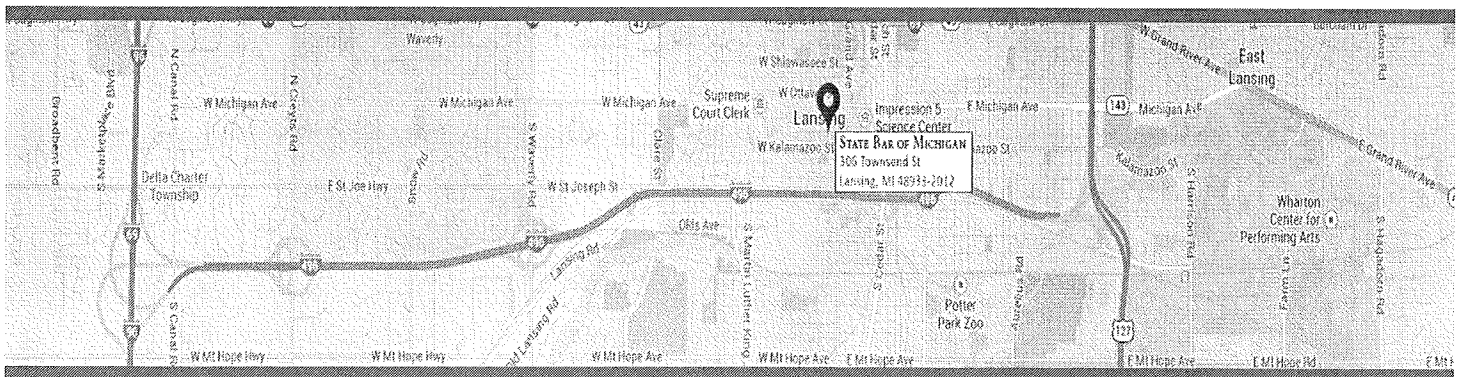
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B-4



## PROBATE INFORMATION

### Guardianship—Acting for Adults Who Become Disabled

- Appointing a Guardian
- Compensation
- Powers & Duties
- Modification & Termination
- Obtaining Legal Assistance

### Conservatorship—Acting for Adults Who Become Disabled

- Appointing a Conservator
- Compensation
- Powers & Duties
- Modification & Termination
- Obtaining Legal Assistance

### Durable Power of Attorney

- Frequently Asked Questions

### Designating Someone to Make Medical Decisions

- Patient Advocate Designation

## Probate Information Patient Advocate Designation—Designating Someone to Make Medical Decisions

Provided by the [Probate & Estate Planning Section of the State Bar of Michigan](#)

### Patient Advocate Designations FAQs

#### *What is a Patient Advocate Designation?*

You have the legal right to make your own medical treatment decisions. But, suppose something happens that makes you unable to make your own medical treatment decisions? Who will speak to the doctors for you? You can choose a person to make these decisions for you by signing a legal document called a "patient advocate designation." This legal document gives the person you choose (the patient advocate) authority to make decisions for your care, custody, and medical treatment when you cannot.



#### *What if I Don't Have a Patient Advocate Designation?*

If you become unable to make your own decisions and you don't have a patient advocate designation, the probate court may be asked to appoint a guardian to make decisions for your care, custody, and medical treatment.

#### *What can be Included in a Patient Advocate Designation?*

You can decide what care and medical treatment you want included in your patient advocate designation. You can also give your patient advocate permission to donate your organs or other body parts for transplant or research after you die.

#### *How can I Make Sure My Patient Advocate Designation is Valid?*

You and two other people (witnesses) must sign the patient advocate designation. You must be of sound mind and age 18 or older. The witnesses are agreeing that you appear to be of sound mind, that you are signing the document of your free will, and that you are not being pressured by others to sign the document.

A witness cannot be your spouse, parent, child, grandchild, sibling, or possible heir. A witness also cannot be a known beneficiary when the document is signed. Others who cannot sign are a physician, a patient advocate, or an employee of one of the following: a health insurance provider, a health facility that is treating you, a home for the aged where you live, or a community mental health services program or hospital that is providing you mental health services.

#### *When can the Patient Advocate Act?*

After you complete the patient advocate designation, your patient advocate must accept and agree to the terms. Your patient advocate act can make decisions for you only 1) after signing an acceptance, 2) when you are unable to make your own medical treatment decisions, and 3) after your attending physician (or supervising physician if you have more than one physician) and another physician or a licensed psychologist determine that you are unable to make your own medical treatment decisions.

#### *What are the Patient Advocate's Duties?*

Your patient advocate must act in your best interest. Your patient advocate must take reasonable steps to follow your expressed desires, preferences, and instructions. This includes preferences you put in your patient advocate designation or that are obvious from your own medical treatment decisions. It is best to put your desires in writing but you don't have to.

Your patient advocate cannot condone, allow, permit, authorize, or approve your suicide or homicide. Your patient advocate cannot make a life-ending decision if you are pregnant.

Your patient advocate may withhold or withdraw treatment, allowing you to die, only if you clearly and convincingly authorized the patient advocate to make such a decision.

The patient advocate's powers cannot be delegated to another person without the patient's prior authorization.

A designation that names your spouse as your patient advocate is suspended during an action for separation or divorce and cancelled when the divorce is final.

Finally, a patient advocate cannot receive compensation but can be reimbursed for expenses.

#### *What are the Responsibilities of Medical Professionals Regarding Patient Advocate Designations?*



Medical professionals are required to use sound medical practice. They also are required to follow your patient advocate's instructions if they believe your patient advocate designation is valid and your patient advocate is following the law.

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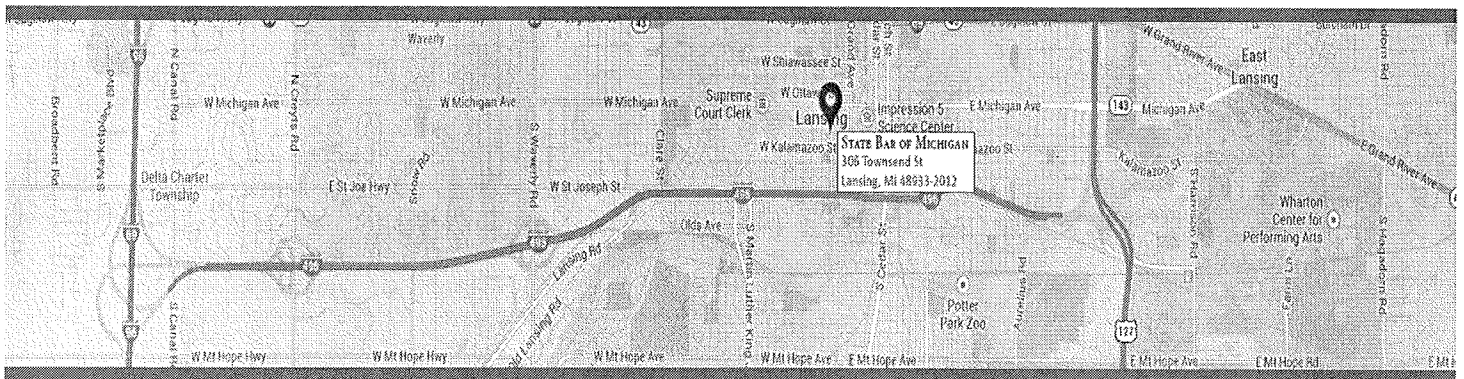
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- News & Events
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