# Massachusetts Probate and Family Court

# Module 4: The Bonding and Reporting Requirements of Guardians and Conservators

## Welcome

Welcome to the Massachusetts Probate and Family Court's orientation program for guardians and conservators of adults.

In this training module you will learn:

* The bonding requirements of guardians and conservators, including surety requirements and how to calculate the penal sum; and
* The reporting requirements of guardians and conservators

All Court forms referenced in this module are available on the Probate and Family Court webpage at mass.gov. They are also at the Registry in each Division of the Probate and Family Court.

## The bonding requirements of guardians and conservators

Before you can be appointed as a guardian or a conservator, you must sign and file a Court form called a Bond (MPC 801). The Bond is usually filed with the Petition for Appointment of a Guardian or the Petition for Appointment of a Conservator.

By signing the Bond, you agree to:

* Accept the appointment as guardian or conservator
* Perform all of your duties according to law; and
* Allow the Court to make future decisions that affect you as guardian or conservator. This is called “personal jurisdiction.”

The bond requires you to state the:

* Estimated value of the adult’s real estate, if any
* Estimated value of the adult’s personal estate, if any, and
* A penal sum if the Bond is with surety. We will talk more about surety requirements and the penal sum next.

## Surety requirements

Sureties are required on the Bond of a guardian and conservator unless the Court waives them. Sureties are like insurance. They can be either personal or corporate.

A Bond with personal sureties is signed by two Massachusetts residents under the penalties of perjury. Each surety states that they have enough assets to cover the Bond's penal sum.

A Bond with a corporate surety is obtained from an insurance company. The insurance company charges an annual premium to be the surety on the Bond.

Most major insurance companies provide surety bonds. You can ask an insurance company that issues corporate surety bonds for a premium quote.

The Court can waive the surety requirement for a guardian’s Bond if the Court determines that it is in the best interest of the adult to do so. The Petition for Appointment of a Guardian has a box that you can check requesting this waiver.

The Court can waive the surety requirement for a conservator’s Bond for good cause shown.

If the adult has nominated the guardian in their most recent Durable Power of Attorney or Health Care Proxy document and has included language that waives the Bond, the Court will consider that language to support a request to waive the surety requirement, but the Bond itself is still required.

If the adult has nominated the conservator in their most recent Durable Power of Attorney document and has included language that waives sureties, the sureties on the Bond should be waived by the Court. The Bond is still required.

## The penal sum

The penal sum is the amount that the sureties may have to pay if you mismanage the estate causing damages.

The penal sum amount is based on the value of the adult’s property. For example, if the adult owns real estate in Massachusetts valued at $500,000 and has personal property valued at $20,000, the penal sum should be $520,000.

The Court can increase or decrease the penal sum amount. No penal sum needs to be stated on your Bond if the Court waives the surety requirement.

## The reporting requirements of guardians

As a guardian, you must report to the Court in writing. You must report the condition of the adult and account for funds and other assets that you possess or control.

The Court has created a form for you to use. It is called the Guardian’s Care Plan Report (MPC 821), and it is used to file your 60 day, annual, and final Reports. Filing these Reports is one of your most important duties as a guardian.

## The 60 day report

As a permanent guardian, you must file a Guardian’s Care Plan Report within 60 days of your appointment. This is referred to as the “60 Day” Guardian’s Care Plan Report.

## The Annual Report

A Guardian’s Care Plan Report is due every year on the anniversary date of your permanent appointment. This is referred to as the “Annual” Guardian’s Care Plan Report. It is due every year for the duration of the guardianship.

## The Final Report

The guardianship may end before your 60 day or your annual Guardian's Care Plan Report is due. This can be because:

* The adult dies
* The adult is determined by the Court to no longer need a guardian
* You resign or are removed as guardian, or
* The guardianship is transferred out of state

When any of these occur, you will designate your Guardian’s Care Plan Report as the “Final” Report. It is best to file it as soon as the guardianship ends and not wait until your Guardian’s Care Plan Report would be due.

If you fail to file your Guardian’s Care Plan Report on time, the Office of Adult Guardianship and Conservatorship Oversight (OAGCO) will issue you a Notice of Noncompliance. Your Guardian’s Care Plan Report must be filed within 30 days of this Notice. If you fail to file your report after the OAGCO notifies you, the Court may order you to appear at a hearing.

To learn how to complete the Guardian’s Care Plan Report, watch *Module 5: How to Complete the Guardian’s Care Plan Report*. To learn about filing and distributing the Guardian’s Care Plan Report, watch *Module 8: How to File and Distribute Guardian and Conservator Reports.*

## The reporting requirements of conservators

As a conservator, you must file certain reports with the Court.

Filing these reports is one of your most important duties as a conservator.

There are three different types of reports you must file. They are the:

* Inventory
* Annual Account, and
* Final Account

## The Inventory

The Inventory (MPC 854 or MPC 854a (without schedules)) is a Court form that the conservator uses to list the adult’s property and its value. It includes both personal property and real estate.

You must file the Inventory within 90 days of your appointment. This applies whether you are appointed as a temporary or a permanent conservator.

To learn how to complete the Inventory, watch *Module 6: How to Complete the Conservator’s Inventory*. To learn about filing and distributing your Inventory, watch *Module 8: How to File and Distribute Guardian and Conservator Reports.*

## The Annual Account

The Account (MPC 853 or MPC 853a (without schedules)) is a Court form that updates the Court on the adult’s financial information and your work as conservator.

Your annual Account must state:

* What came into the conservatorship
* What went out, and
* What is left at the end of the accounting period

If you are a temporary conservator, you must account for the period of your temporary appointment.

If you are a permanent conservator, you must account annually. If this is the first annual Account, the reporting period is from the date of the Decree appointing you as permanent conservator to day 365. This is for the duration of the conservatorship.

When you file your annual Account, you will also need:

* Your Inventory on file with the Court, and
* A Petition for Allowance of Account (MPC 857)

## The Final Account

You must file a final Account when:

* The adult dies
* The adult is determined by the Court to no longer need a conservator
* Your appointment as temporary conservator ends
* You resign or are removed as conservator, or
* The conservatorship is transferred out of state

The final Account form is the same form used for the annual Account. It details what came into the conservatorship since the last annual Account was filed, what went out, and what is left at the end of the accounting period.

When you file your final Account, you will also need:

* Your Inventory on file with the Court; and
* A Petition for Order of Complete Settlement (Conservator) (MPC 860)

To learn how to complete the Account, watch *Module 7: How to Complete the Conservator’s Account.* To learn about filing and distributing your Account, watch *Module 8: How to File and Distribute Guardian and Conservator Reports.*

As conservator, you must remember the due dates for filing your Accounts. If you fail to file your Account on time, the Office of Adult Guardianship and Conservatorship Oversight (OAGCO) will issue you a Notice of Noncompliance. Your Account must be filed within 30 days of this Notice. If you fail to file your account after the OAGCO notifies you, the Court may order you to appear at a hearing.

## Resources

Remember, there are resources available to help you in your role as guardian or conservator.
Click on the icons to see the various resources available.

* Court: If you have questions, you may always ask the Court for direction.
* OAGCO: You may also reach out to the OAGCO, that is the Office of Adult Guardianship and Conservatorship Oversight in the Administrative Office of the Probate and Family Court.
* Email: We are here to help you. You can contact us by email at OAGCO@jud.state.ma.us
* Webpage: You can visit us on the Probate and Family Court webpage at mass.gov to learn more about the OAGCO and how it can assist you as a guardian or conservator.

*Chief Justice John D. Casey:*

*“Thank you for becoming a guardian or conservator for an adult who needs your help.”*

This module was supported, in part, by a grant (No. 90EJIG0023-01-0) from the Administration for Community Living (ACL), U.S. Department of Health and Human Services (DHHS). Grantees carrying out projects under government sponsorship are encouraged to express freely their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official ACL or DHHS policy.