

## To request the Removal of the Guardian

### **MPC 221. Petition for Removal**

Request removal of a guardian if the guardian is unfit and unwilling to resign.<sup>1</sup>

<sup>1</sup>When a guardian resigns or is removed, there needs to be a successor guardian to take their place unless there is an acceptable co-guardian who will continue to serve, or a guardian is no longer needed (see below). Consider becoming the new guardian or propose someone who is acceptable to the individual under guardianship. Then, file MPC 120 Petition for Appointment of Guardian to ensure continuation of the guardianship.

## 3. If No Longer Needed

### To File for Termination of the Guardianship

### **MPC 203. Petition for Termination of Guardianship**

If a guardian is no longer needed, this step would require evidence that the individual does not meet the criteria required for establishing a guardianship, or that an alternate support system is in place such as Supported Decision Making, a Health Care Proxy, Power of Attorney, Representative Payee and/or appropriate services are being provided.

This document is a project of the Allen C. Crocker Family Fellowship, which is co-sponsored by the Massachusetts Developmental Disabilities Network:

- Institute for Community Inclusion at UMass Boston/UCEDD ([www.communityinclusion.org](http://www.communityinclusion.org))
- E.J. Shriver Center/UCEDD (<https://shriver.umassmed.edu>)
- Massachusetts Developmental Disabilities Council ([www.mass.gov/orgs/massachusetts-developmental-disabilities-council](http://www.mass.gov/orgs/massachusetts-developmental-disabilities-council))
- Disability Law Center ([www.dlc-ma.org](http://www.dlc-ma.org))

It was also funded in part by the Administration on Intellectual and Developmental Disabilities, US Dept. of Health and Human Services (#93.630)



Published June, 2019

## RESOURCES

### **Committee for Public Counsel Services**

617 988 8341

[www.publiccounsel.net](http://www.publiccounsel.net)

### **Department of Developmental Services (for clients of DDS)**

Chris Klaskin, Ombudsman

617 624 7526

[Christopher.m.klaskin@state.ma.us](mailto:Christopher.m.klaskin@state.ma.us)

Frances Nwajei, Director of Human Rights

617 624 7782

[Frances.nwajei@state.ma.us](mailto:Frances.nwajei@state.ma.us)

### **Dept. of Mental Health (for clients of DMH)**

Star Sims, Director of Human Rights

617 626 8218

[Startese.sims01@dmh.state.ma.us](mailto:Startese.sims01@dmh.state.ma.us)

### **Disability Law Center (Protection and Advocacy Agency)**

617 723 8455

[www.dlc-ma.org](http://www.dlc-ma.org)

### **Disabled Persons Protection Commission (Report Abuse for individuals aged 18 to 59)**

800 426 9009

[www.mass.gov/orgs/disabled-persons-protection-commission](http://www.mass.gov/orgs/disabled-persons-protection-commission)

### **Executive Office of Elder Affairs (for individuals 60 or older)**

800 922 2275 (general information)

800 243 4636 (abuse hotline)

[www.mass.gov/orgs/executive-office-of-elder-affairs](http://www.mass.gov/orgs/executive-office-of-elder-affairs)

### **Mental Health Legal Advisors Committee (for general information only)**

617 338 2345

[www.mhlac.org](http://www.mhlac.org)

### **National Alliance on Mental Illness Massachusetts**

617 580 8541

<https://namimass.org>

# Guardianship Challenges and Options

## A guide for concerned persons when you think there may be a problem



***“Unless someone like you cares  
a whole awful lot, nothing is  
going to get better. It’s not.”***

***~Dr. Seuss***

This information is not offered as legal advice and should not be used as a substitute for seeking professional legal advice.

## Do you know someone who needs help with a guardian who:

1. may be limiting their access to family and friends or otherwise restricting them from inclusion in community activities
2. may not be following through with their commitment to the person
  - a) may be neglecting them, not advocating for them, not accessible
  - b) may be unaware of side effects of anti-psychotic medication
  - c) may no longer be competent or fit to act as guardian
3. is no longer needed

## First things first ...

Try to work things out, problem solve with others who care or are involved with the individual, and the guardian.

- If you reach out to an organization (i.e. DDS, DMH, Elder Affairs) that will not speak to you because you are not the guardian, ask them to listen to your concerns and let them know you are not asking them to share private information.
- Note that some circumstances are beyond the guardian's control.

Case law (see in re Guardianship of B.V.G., 474 Mass. 315 (2016)) allows a person interested in the welfare of an individual with a guardian to intervene or take action on the individual's behalf, under certain circumstances. See [http://Mhla.org/wp-content/uploads/2018/10/interested\\_persons\\_in\\_guardianship\\_matters.pdf](http://Mhla.org/wp-content/uploads/2018/10/interested_persons_in_guardianship_matters.pdf)

## What's Next?

If attempts at resolving issues with the guardian have failed, there are several forms that may be filed with Probate and Family Court in order to start a process that may improve the situation for the individual you have concerns about. These forms should be filed with the Probate and Family Court where the guardianship was established.

Both the forms and the locations of the courts by county may be found at [www.mass.gov/orgs/probate-and-family-court](http://www.mass.gov/orgs/probate-and-family-court). You may be able to get help with the forms and some legal assistance if the court you need to go to has a "Lawyer for the Day", a Guardianship Clinic or a Court Service Center. Call the court to inquire if these are offered. Learn more about services that may be provided by visiting [www.mass.gov/service-details/lawyer-for-the-day-programs](http://www.mass.gov/service-details/lawyer-for-the-day-programs) and [www.mass.gov/service-details/learn-about-court-service-centers](http://www.mass.gov/service-details/learn-about-court-service-centers)

Note that there are forms that need to be filed in addition to the ones discussed below. Consult with a lawyer or the court to ensure all necessary paperwork is submitted.

## FORMS

### In all cases -

#### To Request an attorney for the individual

##### **MPC 301. Request for Counsel**

In all guardianship related matters, the individual should have an attorney represent him/her. Once the request for an attorney is processed, an attorney trained by the Committee for Public Counsel Services will be appointed. Unless the individual is indigent and has no financial resources, payment may be due for the services of the appointed attorney. The individual may also hire his/her own attorney.

#### To provide information to the Court

##### **MPC 302. Application for Permission to Provide Information**

Any interested person may file this form in order to advocate for the individual and provide information to the court.

## 1. If Limiting Access

#### To request limiting the Powers of the Guardian

##### **MPC 220. Petition to Expand-Modify-Limit the Powers of the Guardian**

and

##### **MPC 720a. Exhibit A-Limitations to Guardianship**

These forms are used to request that the guardian's authority be limited so that they may not restrict such activities as visitation or communications with a family member or friend, or activities in the community.

## 2. If Not Following Through

#### To seek the Guardian's Resignation

##### **MPC 202. Petition for Resignation of a Guardian**

The guardian may be willing to step down if unable to meet their obligations, or if unfit.<sup>1</sup> There may be an acceptable co-guardian already in place.

#### To request a Co-guardian

##### **MPC 120. Petition for Appointment of Guardian**

The guardian may simply need assistance in meeting their obligations. Consider becoming a co-guardian or propose someone acceptable to the individual under guardianship. (If you are the guardian and are in need of assistance consider proposing a suitable co-guardian.)