

## Massachusetts Uniform Probate Code: A Practical Summary of Changes Affecting Guardianship & Conservatorship

The new Massachusetts Probate Code, effective on July 1, 2009 is the latest reform aimed at protecting the rights of disabled individuals. The changes in guardianship law represent a progressive trend that emphasizes the strengths of the individual under guardianship rather than the limitations, with the goal of preserving the individual's autonomy and self-determination and providing protection only in areas where impaired function creates vulnerability to harm. *To this end, the scope of court appointments will be narrower and more specific, with greater accountability and more oversight by the court. A synopsis of these changes follows:*

### Changes in language as of July 1, 2009

- A guardian will be appointed for the protection of the person only. [5-301]
- A conservator will be appointed to protect property and manage finances. [5-401]
- If an incapacitated person needs both financial management and medical decision-making, the court may appoint both.
- One person (or organization) may be appointed both the guardian and the conservator for the incapacitated person.
- The court will require separate petitions for guardianship and conservatorship even if both are needed by the same individual.

### Increased oversight by the Court

- Guardians must provide written reports to the Court within 60 days of appointment and annually thereafter.
- The court is mandated to establish a system to monitor accounts and reports. [5-309(c)].

### Additional limitations on a Guardian's authority, beyond current Roger's authority

- Guardians will need court authority to admit to a nursing home:  
The Court will need to be convinced that placement in a nursing home is in the incapacitated person's best interest.
- Authority to commit to psychiatric hospital which will be obtained in District court rather than Probate court.

### Limited Guardianships

- *Plenary guardianships* which allow nearly unlimited decision-making authority have been routine in Massachusetts for decades. The new Code encourages Probate judges to tailor orders to the individual's strengths and areas of need. This approach seeks to preserve the individual's functional capacity as well as personal rights.

### Changes in Conservatorship

- Conservators will continue to file Inventories & annual Accounts as before, but Accounts must now include a list of services provided and recommendations regarding the continued need or changes in the breadth of the conservatorship. [5-418(b)]
- As in guardianship, there is an emphasis on promoting the incapacitated person's participation in decision-making.
- In turn, the court is obligated to review filings and reports in timely manner.

The Massachusetts Probate Code was drafted and sponsored by the Massachusetts Bar Association and the Boston Bar Association and is a joint effort of judges, Registers of Probate and guardianship public interest groups.

### References

Guardianship provisions in the (Massachusetts) Uniform Probate Code

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