

Massachusetts Uniform Probate Code: A Practical Summary of Current Guardianship & Conservatorship Law

The Massachusetts Probate Code, effective on July 1, 2009 is the latest reform aimed at protecting the rights of people with disabilities. The changes in guardianship law represented 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 has become narrower and more specific, with greater accountability and more oversight by the court.*
A synopsis of these changes follows:

Changes in language

- A guardian is appointed for the protection of the person only. [5-301]
- A conservator is 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 requires separate petitions for guardianship and conservatorship even if both are needed by the same individual.

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

Limited Guardianships

- Plenary guardianships, which allow nearly unlimited decision-making authority, were routine in Massachusetts for decades. The Uniform Probate 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 must file Inventories & annual Accounts must 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 a timely manner.

The Massachusetts Guardianship Association (MGA) is spearheading efforts to establish public guardianship in the state to protect vulnerable populations. The JF&CS Guardianship program is a member of MGA.

References

Guardianship provisions in the (Massachusetts) Uniform Probate Code

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