

FACTORS TO CONSIDER WHEN APPLYING FOR GUARDIANSHIP TERMINATION



WHAT TO CONSIDER BEFORE TERMINATING A GUARDIANSHIP

- Prior to taking action to terminate an existing guardianship, you will want to consider what supports might be necessary to assist the person in making choices after that guardianship has been terminated.
- You may consider utilizing resources from the State of Michigan’s Supported Decision Making (SDM) Toolkit. An introduction to the use of the SDM toolkit can be found here: [Introduction to Supported Decision-Making Toolkit](#)
- The SDM tool-‘Exploring Decision-Making Supports’ is a great tool to start with as this allows the person to review various ‘areas’ of decision making. This can assist a person and their network of support in determining how decisions will be made and what level of support may be needed. That document is linked [here](#).

PETITION TO TERMINATE

Once a guardianship is established, in order for that guardianship to end, a petition to terminate must be submitted to the county probate court the guardianship was established in.

The petition can be found at:

<https://www.courts.michigan.gov/siteassets/forms/scao-approved/pc677.pdf>

A petition to terminate can be submitted at any time.

Please note: A partial guardianship with a 5 year expiration does not technically expire without a petition to terminate. So even in cases of partial guardianships, a petition to terminate is still needed in order to formally end the guardianship and restore the rights of the person. (This point has been discussed among the legal professionals, as the statute implies it CAN naturally terminate, however in our experience, the court requires a formal action to terminate).

INFORMATION NEEDED FOR COURT

The information needed in order to evaluate the court's ability to terminate the guardianship may vary from judge to judge and jurisdiction to jurisdiction. However, in some cases, a judge will want to review 'evidence' that the person has made progress toward independence. These may include:

- ✓ What system of supports may replace guardianship and ensure the persons best interests are maintained, etc.
- ✓ The Judge may also require evidence that the person can provide consent; this could include additional psychological testing.
- ✓ The court may also review the annual report of the ward submitted by the person currently serving as guardian in order to evaluate the support that has been provided.
 - In cases where the annual report indicates increased independence, decrease in support needs, etc. that may garner better success in terminating the guardianship.
 - The SDM Toolkit is a great resource for exploration in terms of the various tools that may be implemented to assist a person in managing various affairs, like the use of Rep Payee to assist a person in managing their Social Security benefits, or the use of a shared bank account to allow for assistance and oversight of the flow of money. A link to the entire SDM Toolkit can be found here: [Supported Decision-Making Toolkit](#).

Overall, the court is responsible for ensuring the wellbeing of the 'wards' charged with their oversight. Due to this, the court/judge will need to be able to confirm that the person is able to provide consent, will have a system of supports to lean on if needed in terms of legal decision making, etc.

Also see Checklist: Factors to consider when applying for guardianship termination.

SAMPLE PETITION TO TERMINATE LANGUAGE

DISCLAIMER: The excerpt below is not for reproduction and is meant to serve as an example of language used. The language is property of The Arc of Oakland County and not meant for public use, reproduction or distribution.

Here is sample language The Arc of Oakland County sends to the court on behalf of the family, when petitioning to terminate.

Enclosed, please find the administrative documents relative to a petition to terminate guardianship for individual with a developmental disability

XXXXXX and her family are members at The Arc of Oakland County, and we have discussed XXXXXX desire to pursue a less restrictive form of supported decision making. XXXXX has shown much growth over the past five years, and we feel she can successfully enter into a power of attorney relationship with her parents once her rights are restored.

Pursuant to Michigan mental health code section 330.1644, a “guardianship can terminate by expiration of the term, and upon termination of a guardianship, the developmentally disabled person regains all legal and civil rights that have been designated as legal disabilities.” Given all the progress and growth XXXXX has demonstrated, we respectfully request that her guardianship terminate, and her rights be restored. If a hearing date is required, we request to extend the guardianship until such date.

This document is owned by The Arc of Oakland County. Reproduction is allowed with proper attribution and without alteration.



www.thearcoakland.org