

# S.C.A.M.S.

## Stopping

## Crimes

## Against

## Macomb

## Seniors



**MACOMB COUNTY PROSECUTOR'S OFFICE**

Toll-Free fraud Hotline 866-498-8503

Macomb County Prosecutor Peter J. Lucido

[Prosecutor.macombgov.org](http://Prosecutor.macombgov.org)



# Dear Macomb County Seniors,

The Macomb County Prosecutor's Office is providing this informational packet to promote the safety of and take initiative on helping the senior citizens of Macomb County.

In this document you will find ways to enroll in beneficial programs to help with finances, guidance for writing a will, and information about guardianship. Our goal is to protect and prepare vulnerable seniors and nursing homes from being taken advantage of by establishing a foundation on what to do within these situations.

Most of the material is question and answer based, comprised of the most frequent inquiries from the people of Macomb County. We want to help our aging community members by providing essential information and clarity to those who need it.

This information provides seniors with the necessary tools to continue to live their lives happily and safely. Here at the Prosecutor's Office we are committed to making sure the golden years stay golden.

Very truly yours,

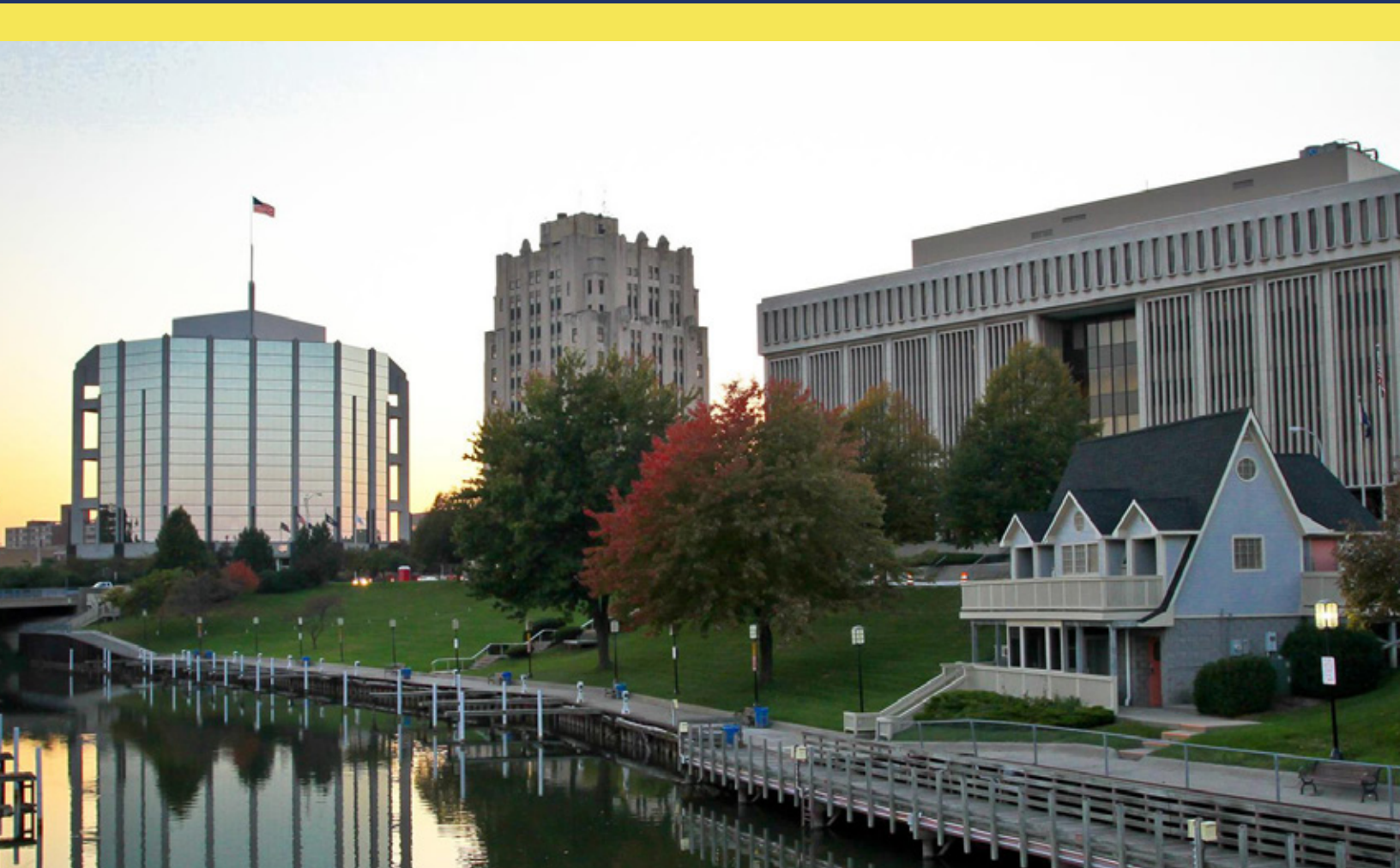


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Macomb County Prosecutor



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# SCAMS

## **What is a scam?**

A scam is a way to “trick” people out of their money and/or property by convincing them to participate in a fraudulent scheme.

## **How can I avoid being taken?**

First, be aware of specific scams. If it sounds too good to be true, it probably is. Second, keep your personal information to yourself. Never give out your social security number, bank account information, or other information regarding your accounts. Third, protect your passwords.

## **What are some scams?**

**Bank examiner:** A person calls claiming to be a bank investigator. He asks for your cooperation in helping catch an embezzler. You are supposed to help by withdrawing money from your bank account and giving it to him.

**Pigeon drop:** A person approaches you, claiming to have found a large sum of money. He promises to share it if you first give him money to prove your good faith.

**Pyramid/Ponzi:** A salesperson offers you an opportunity to receive money or goods for convincing other people to participate in a sales scheme. Some of these promotions are illegal in Michigan.

**Phishing:** Is an attempt by fraudsters to obtain your user names, passwords, credit card numbers and other confidential information through electronic communications by posing as a legitimate company. Never give out your personal information in response to an email. When in doubt, check it out by calling the company directly.

## **When else may fraud occur?**

Fraud may occur in any consumer transaction. Be particularly wary of home improvement offers, work-at-home schemes, and the sale of vacation or retirement real estate.



## IDENTITY THEFT

### Warning Signs:

- ✓ Your purse or wallet is stolen
- ✓ Your bank account is overdrawn or there is unusual activity on your credit card.
- ✓ Mail you are expecting doesn't arrive, especially related to financial matters; bills you paid are still showing due.
- ✓ You apply for a credit card or loan and are denied.



### Preventative Steps:

- Carry a close-fitting or hidden pouch instead of a purse or carry a wallet in your front pocket.
- Reduce the items you carry in public such as extra credit cards, Social Security card, and check book.
- Shred, tear into small pieces, or cut up all mail and documents that contain Social Security, bank, and credit card numbers.
- Place mail with bills to be paid at the Post Office. Ask that new boxes of checks be held at your bank or credit union rather than mailed to you.

## TELEMARKETING FRAUD

### Warning Signs:

- ✓ You must pay money up front for taxes or fees to participate.
- ✓ You must make an immediate decision, before the call ends, or the offer will be rescinded.
- ✓ You are called more and more frequently by a multiplying variety of telephone solicitors.



### Preventative Steps:

- Never talk to strangers on the telephone - they are not calling to wish you a good day. They are invading your privacy, as though they have walked into your home.
- Use an answering machine, voice mail, or Caller ID to screen calls.
- Never, under any circumstance, give any portion of your credit card, bank account, or Social Security numbers to a caller.

## MAIL & INTERNET FRAUD

### Warning Signs:

- ✓ You play daily sweepstakes because you think you need extra money, holding out hope you will win a big prize someday.
- ✓ You believe your mail is legitimate because it is delivered by the U.S. Postal Service.
- ✓ You open and read all of your mail because many pieces look like official government documents or heart-felt solicitations for charity.
- ✓ You're getting the same offers through e-mail that you receive through the mail.



### Preventative Steps:

- Even though it may be fun or give you something to do, stop participating in sweepstakes, lottery, and contest offers.
- If you were to truly win something, you NEVER have to pay any fees, taxes, or costs of ANY kind before receiving your winnings - that's the law!
- Don't give into temptation. If you receive a mailing/e-mail that 1) promotes sweepstakes/lotteries, charities, credit repair, work-at-home offers; 2) suggests you can make money by assisting a wealthy person from outside the United States, and 3) requests verification of account numbers throw the envelope away or delete the e-mail without opening it.

## HOME IMPROVEMENT FRAUD

### Warning Signs:

- ✓ A contractor solicits you at your door, insisting you have a problem which must be repaired right away.
- ✓ A contractor offers you a bargain price or claims to have materials left over from another job.
- ✓ A contractor requires a substantial payment in advance or charges significantly more after the work is completed.
- ✓ An inspector appears at your door, claiming to work for the city or a utility company and must come into your home to inspect your water heater, furnace, or back yard.



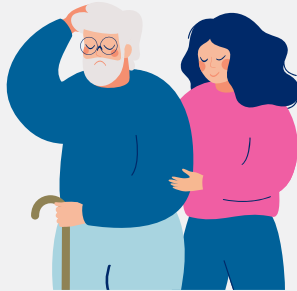
### Preventative Steps:

- BEWARE of door-to-door contractors who use h scare tactics to get an immediate decision.
- DON'T do business with someone who comes to your door offering a bargain or claims to have materials left over.
- Get at least 3 written bids. DON'T always choose the lowest bidder - you get what you pay for!
- Ask to see their state issued builder's license
- Require the contractor to use a written contract that lists materials, costs, and the completion date.
- Don't allow any stranger into your home, no matter who they claim to be. City inspectors do not go door to door!

## CARE GIVER FRAUD

### Warning Signs:

- ✓ Unusual activity in bank and credit card accounts.
- ✓ Care giver tries to isolate the victim who comes to rely solely on the care giver.
- ✓ Care giver has total control over finances and has all financial statements mailed to him or her.
- ✓ New acquaintances appear on the scene and the adult is either completely charmed, or fearful of the care giver.



### Preventative Steps:

- If your care giver, financial Power of Attorney, relative, neighbor, or anyone else suggests you make a change in your assets, your investments, or insurance, always get two or three other opinions from other relatives or advisors. Only a potential crook will not want you to discuss the change with others.
- No matter how much you know, love, or trust someone, never sign documents you have not read or do not understand.
- Even if you have a representative payee, Power of Attorney, or other advisor who manages your finances, insist on receiving and reviewing copies of all bank and financial statements.

## Remove Your Information from Marketing Lists

- Don't play direct mail sweepstakes or talk to telemarketers.
- Sign up for the National DO NOT CALL Registry for both your home and cell phones at: 888-382-1222 or [www.donotcall.gov](http://www.donotcall.gov).
- Ask phone companies and others with whom you do business to put you on their 'DO NOT CALL LISTS'.
- 'OPT OUT' of credit reporting agencies' credit card solicitation marketing lists: 888-567-8688 or [www.optoutprescreen.com](http://www.optoutprescreen.com).
- Call your credit card(s) customer service number(s) to 'OPT OUT' of marketing programs, including 'convenience checks'.
- 'OPT OUT' of financial institution and insurance companies' marketing programs through which your name may be shared.
- Reduce e-mail/mail through the Direct Marketing Association: [www.dmaconsumers.org/consumerassistance.html](http://www.dmaconsumers.org/consumerassistance.html)



## *Advance Directives for Health Care:*

# MICHIGAN'S PATIENT ADVOCATE LAW

## Frequently Asked Questions

### **1. What is an “advance directive” and do I have to have one?**

An advance directive is a written document in which a competent individual gives instructions about his or her health care that will be implemented at some future time should that person lack the ability to make decisions for himself or herself. You do not need to have an advance directive; the decision to have one is purely voluntary. No family member, hospital, or insurance company can force you to have one or dictate what the document should say if you decide to write one.

### **3. Are there different types of advance directives?**


Yes. There are three types: a durable power of attorney for health care, a living will, and a do-not-resuscitate order. Living wills are not recognized in Michigan statute. However, in case of a dispute over your health care desires, your written or oral statements regarding your wishes pertaining to health care or the withdrawal or refusal of treatment may be used as evidence in court, if you are unable to participate in health care decisions. You may wish to consult an attorney for further information regarding durable powers of attorney or living wills.

### **4. What is MIPeace of Mind Registry?**

The Michigan Peace of Mind Registry is a free and voluntary statewide registry service that securely stores your advance directive and allows healthcare providers to access it, if or when needed. MIPeace of Mind will provide you with a wallet-sized registration card you can present to a healthcare provider so they may request a copy of your advance directive. Registration does not affect whether your advance directive is legally binding. For more information please contact Gift of Life Michigan, (800) 482-4881, [www.MIPeaceofMind.org](http://www.MIPeaceofMind.org).

### **5. What is a “designation of patient advocate”?**

In Michigan statute, a designation of patient advocate is the term used for a durable power of attorney for health care, also known as a health care proxy—a document in which you give another person the power to make medical treatment and related personal care and custody decisions for you.





**6. Is a durable power of attorney for health and/or mental health care legally binding in Michigan?**

Yes, based on a state law passed in 1990 (PA 312 of 1990), later replaced by PA 386 of 1998 and PA 532 of 2004 (sections 700.5506-700.5515 of the Michigan Compiled Laws).

**7. Who is eligible to create a designation of patient advocate?**

Anyone who is 18 years of age or older and of sound mind is eligible.

**8. What is the title of the person to whom I give decision-making power?**

That person is known as a “patient advocate.”

**9. Who may I appoint as a patient advocate and do they need to accept the responsibility before acting?**

Anyone who is 18 years of age or older may be appointed. You should choose someone you trust who can handle the responsibility and who is willing to serve. He or she must sign an acceptance. This does not have to be done at the time you sign the document. Nevertheless, you should speak to the person you propose to name as patient advocate to make sure he or she is willing to serve.

**11. When can the patient advocate act in my behalf?**

The patient advocate can make decisions for you only when you are unable to participate in medical treatment decisions. The patient advocate for mental health treatment can make decisions for you when you are unable to give informed consent for mental health treatment.

**12. Why might I be unable to participate in medical and mental health treatment decisions?**

You may become temporarily or permanently unconscious from disease, accident, or surgery. You may be awake but mentally unable to make decisions about your care due to disease or injury. In addition, you might have a temporary loss of ability to make or communicate decisions if, for example, you had a stroke. Others might suffer long-term or permanent loss through a degenerative condition such as Alzheimer’s disease. Your doctor and a mental health professional, after examination, may determine that you are unable to give informed consent for mental health treatment.



### **13. Who determines that I am no longer able to participate in these decisions?**

Your attending physician and one other physician or licensed psychologist must make that determination. If your religious beliefs prohibit an examination to make this determination, and this is stated in the designation document, you must indicate in the document how the determination will be made. For mental health treatment, your physician and a mental health professional must make that determination.

### **14. What powers can I give a patient advocate?**

You can give a patient advocate the power to make those personal care decisions you normally make for yourself. For example, you can give your patient advocate power to consent to or refuse medical treatment for you, to arrange for home health care or adult day care, arrange care in a nursing home, or move you to a home for the aged. A patient advocate may also be empowered to make an anatomical gift of all or part of the patient's body. According to state law, if you were to become incompetent while pregnant, your patient advocate could not authorize a medical treatment decision to withhold or withdraw treatment that would result in your death. You can give your patient advocate for mental health the power to obtain and consent to mental health care and treatment that is in your best interest, including arranging for appropriate residential placement and making payments to secure the necessary treatment.

### **15. Can I give my patient advocate the authority to make decisions to withhold or withdraw life-sustaining treatment, including food and water administered through tubes?**

Yes, but you must express in a clear and convincing manner that the patient advocate is authorized to make such decisions, and you must acknowledge that these decisions could or would allow your death. If you have specific desires as to when you want to forego life-sustaining treatment, you must describe in the document the specific circumstances in which he or she can act.

### **16. Do I have the right to express in the document my wishes concerning medical treatment and personal care?**

Yes. You might, for example, express your wishes concerning the type of care you want during terminal illness. You might also express a desire not to be placed in a nursing home and a desire to die at home. Your patient advocate has a duty to try to follow your wishes.





**17. Is it important to express my wishes in the designation of patient advocate document?**

Yes. Your wishes might not be followed if others are unaware of them. It can also be a great burden for your patient advocate to make a decision for you without your specific guidance.

**18. Can I revoke my patient advocate designation?**

Yes. A patient may revoke his or her designation at any time and in any manner sufficient to communicate an intent to revoke. However, for mental health treatment, you may waive your right to revoke your Patient Advocate Designation for up to 30 days to allow for treatment.

**19. Can I appoint a second person to serve as patient advocate in case the first-named person is unable to serve?**

Yes. In fact, this is highly recommended.

**20. Must a designation of patient advocate document be witnessed?**

Yes. A designation must be signed in the presence of and signed by two witnesses. The witnesses must not include your spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of the witnessing, physician, or patient advocate. Witnesses must also not include an employee of your life or health insurance provider, a health facility that is treating you, a home for the aged where you reside, or a community mental health services program or hospital that is providing mental health treatment to you.

**21. In general, what should I do before completing an advance directive?**

Give careful consideration to whom you might choose to be your advocate or to act in your place. Think about your treatment wishes. Discuss the issue with family members. Talk with your minister, rabbi, priest, or other spiritual leader if you feel it would be helpful. Bring the subject up with your doctor. Have a discussion about the benefits and burdens of various types of treatment.

**22. Are there issues I should give particular attention to?**

Yes. Many people have strong feelings about the administration of food and water, either by tube down their throat, a tube placed surgically into their stomach, or intravenously. You should consider and indicate in what circumstances, if any, you wish such procedures withheld or withdrawn. Also, bear in mind that your opinions regarding your own health care may change over time. Your wishes regarding medical treatment when you are relatively young may be quite different from your wishes when you reach advanced age, so you may wish to review your decisions periodically with your patient advocate.

**23. Is there a standard form for an advance directive?**

No. You may use a form designed by an organization, you may hire an attorney to draft the necessary documentation, or you may write out the document yourself. If you write the documentation yourself, make sure that it is legible. Under state law, the designation must be in writing, you must sign the document, date it, and have it witnessed as described above. A person accepting the responsibility to act as a patient advocate must sign an acceptance to the designation document which contains provisions required by statute.

**24. What if there is a dispute as to how my designation of patient advocate should be carried out?**

If there is a dispute as to whether your patient advocate is acting consistent with your best interest, the probate court may be petitioned to resolve the dispute. The court can remove a patient advocate who acts improperly on your behalf.

# GUARDIANSHIP

## Frequently Asked Questions

### **What is a guardian?**

A guardian is a person appointed by probate court and given power to make some or all decisions about the care of another person. A person for whom a guardian is appointed is known as a ward.

### **How does the appointment of a guardian affect an individual's rights?**

An individual may lose certain rights. A guardian can be given the power to choose where a ward will live; to consent to medical treatment; to receive money and property belonging to the ward; and to apply this money toward the ward's support and care.

### **Who can petition the court for appointment of a guardian?**

An individual on his or her behalf, a family member, a Department of Health and Human Services worker in cases of abuse or neglect, or any person interested in the welfare of the prospective ward can petition the court.

### **What should I do if a guardianship is sought and I disapprove?**

Consult a lawyer immediately. If you do not know a lawyer, seek referral through the county or state bar association, or contact the local legal services office. See page 26 for services in your area.

### **What will happen if I don't retain a lawyer?**

Probate court will appoint a person, known as a guardian ad litem, to represent you during guardianship proceedings. This person will be chosen by the court, not by the petitioner. The guardian ad litem must visit you, explain the proceeding, inform you of your rights, and determine whether you wish to protest the guardianship.

### **What rights do I have when facing potential guardianship?**

1. You have the right to object to the guardianship, to the powers of the guardian, and to appointment of a particular person as guardian.
2. You have the right to be present at the hearing.
3. You have the right to be represented by a lawyer. The court will appoint a lawyer if you request one or if you wish to contest any aspect of the proceeding.
4. You have the right to present evidence on your own behalf.
5. You have the right to cross-examine all witnesses.
6. You have the right to have a jury trial.



**When can the court appoint a guardian?**

The court must be convinced by evidence presented at the hearing that you are not capable of making informed decisions about your own care.

**Can a guardian be appointed just because of my age?**

No.

**Can a guardian be appointed just because I am physically disabled?**

No. For example, a guardianship is not appropriate merely because a person is wheelchair-bound due to severe arthritis. A guardianship may only be imposed if a disability substantially affects intellectual functioning.

**Who can be appointed as guardian?**

The following people may be appointed as guardian: your spouse; an adult child or relative you have lived with; a parent; any other adult; or an agency. If none of these persons is suitable and willing to serve, the court may appoint a professional guardian.

**Can I choose my own guardian?**

Yes. The court must appoint the person chosen if that person is suitable and willing to serve.

**Do all guardians have the same powers?**

No. If a guardianship is appropriate, the court must tailor the powers of the guardian to the demonstrated need of the ward.

**Can I handle my own financial affairs?**

A court may allow a ward to control part of his or her property to encourage self-reliance and independence. For instance, a court may allow a ward to maintain a checking account.

**While under guardianship, do I have the right to make a will?**

Yes, if you are aware of property owned and natural heirs, and understand that the document drafted is a will.

### **Can a guardian commit a ward to a mental hospital?**

A person can be involuntarily committed if he or she is mentally ill and dangerous to oneself or others. This determination can only be made after a commitment hearing, often separate from the guardianship hearing.

### **What are the responsibilities of a guardian?**

The responsibilities of a guardian include providing for the care and comfort of the ward, and taking reasonable care of assets. In addition, a guardian must secure services to help the ward return to self-care as soon as possible.

### **Can a guardian be replaced?**

Yes. You, or any person interested in your welfare, can petition the court to remove a guardian. The court will remove the guardian and appoint another person if it is in your best interest.

### **How long will a guardianship last?**

Oftentimes, a guardianship lasts until death. But the court must review your guardianship one year after it begins and then every three years. You also have the right to request a review.

### **What if I feel I no longer need a guardian?**

You can send a letter to the judge of probate court requesting the guardianship to be ended, or a petition can be filed by you or anyone interested in your welfare. In either case, a hearing will be held.

### **What rights do I have at this hearing?**

All rights you had during the initial hearing are retained in a termination hearing, including the right to an appointed lawyer. Presentation of a statement on your behalf from a doctor may be particularly important.

### **What is a conservator?**

A conservator is a person or corporation appointed by probate court to manage another person's property and financial affairs, as compared to a guardian, who is appointed by probate court and makes decisions about the care of another person.

### **When can the court appoint a conservator?**

In general, after a hearing the court can determine that you are unable to manage your property and financial affairs effectively for a variety of reasons, including mental illness, physical illness or disability, and drug or alcohol dependency. In some cases, the court may appoint a conservator if you have money that is needed for your support, care, and welfare and it will be wasted or dissipated unless there is proper management. If you need a guardian and have substantial property, a conservator may also be appointed. (Sometimes the same person serves as both guardian and conservator.)

**Can a conservatorship be imposed just because of my age?**

No. However, the court may appoint a conservator for an individual who is mentally competent, but due to age or physical infirmity, is unable to manage his or her property and affairs effectively, and who requests that a conservator be appointed.

**Can I choose my own conservator?**

Yes. If you have the capacity to make an intelligent choice, the court in almost all circumstances must respect this choice.

**What powers does a conservator have?**

A conservator becomes trustee of all property belonging to the other person. He or she has broad, but not unlimited, power to deal with the property in the interests of the other person. Per Public Act 173 of 2012, a conservator cannot sell or otherwise dispose of a protected individual’s dwelling, real property, or interest without the court’s approval.

**Can a conservator decide where someone will live?**

Legally, a conservator does not have this power.

**Can a conservator consent to medical treatment on your behalf?**

No.

**What are the responsibilities of a conservator?**

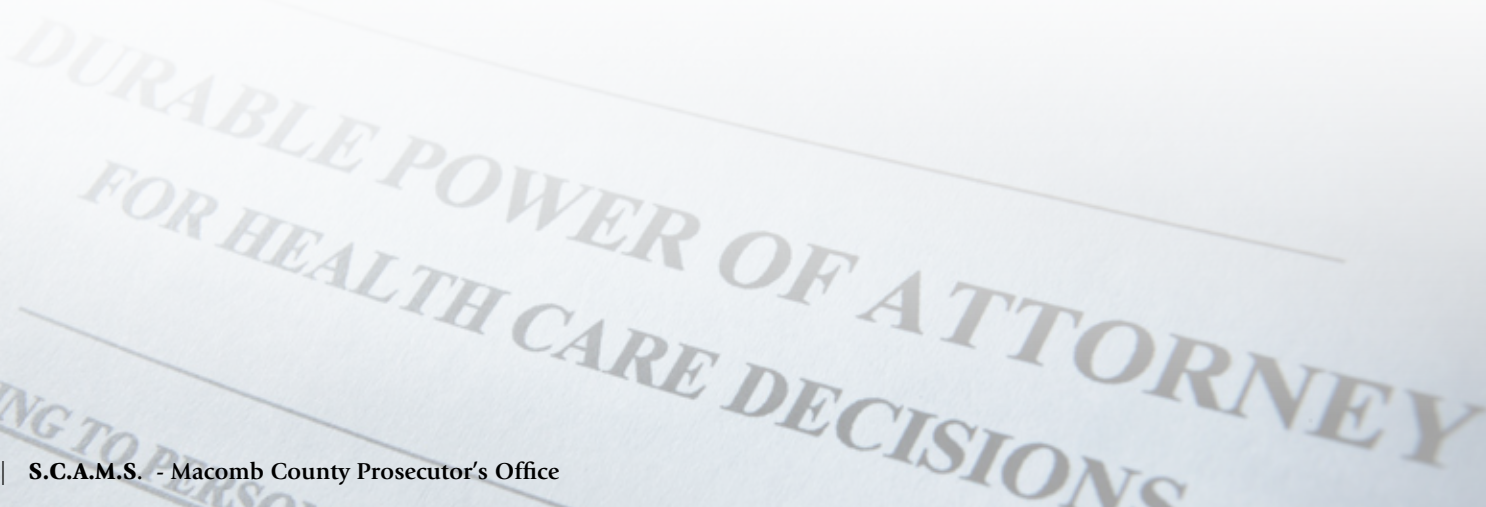
A conservator must spend funds of the person necessary for support, education, and care. He or she must file with the court a list of all property, and keep accurate records of money received and money spent.

**Can a conservator be replaced?**

Yes. A conservator can be removed by the court if he or she is not properly carrying out his or her responsibilities.

**What if I feel I no longer need a conservator?**

You, or anyone interested in your welfare, can file a petition with probate court requesting the conservatorship be ended. If a conservator was originally appointed at your request, a hearing may not be necessary. Upon termination of the conservatorship, title to all property passes back to you. For more information, please consult an attorney.





## **DURABLE POWER OF ATTORNEY**

### **What is a power of attorney?**

A power of attorney is a document which gives another person the power to handle some or all of your financial or legal affairs. The person to whom you give this power is known as your “attorney-in-fact.”

### **What is a durable power of attorney?**

An ordinary power of attorney ends when you become mentally incompetent to handle your affairs because of sickness or injury. A durable power of attorney does not end in these circumstances, but rather survives until your death. Also, you can draft a durable power of attorney which only takes effect if and when you become incompetent (unable to make decisions for yourself).

### **What powers can I give through a durable power of attorney?**

There are two types of durable powers of attorney. One gives your attorney-in-fact power over all property and financial affairs—signing checks making deposits, paying bills, selling property & investing money. (An attorney-in-fact cannot cash your Social Security check, but can deposit it and then make withdrawals.) You can grant your attorney in-fact power to deal only with certain property, and be quite specific how you want this property managed. The second is a durable power of attorney for health care. This was explained more fully above in this section.

### **If my spouse and I own everything “jointly,” might a durable power of attorney still be useful?**

Yes. If you become incompetent your spouse can still sign checks and make withdrawals on joint bank accounts, but your spouse cannot sell jointly owned stocks or real estate without your signature. Your spouse cannot name or change a beneficiary on your life insurance or your retirement benefits, unless she is your attorney in fact.

### **Who can I appoint as attorney-in-fact?**

You can choose any person age 18 or over—spouse, relative, friend—or a bank. It is important to appoint someone you trust, who can handle the tasks, and who is willing to serve.





**Can I name more than one person as attorney-in-fact?**

Yes. You can name two people to act jointly or name a second person to serve if the first is unable to do so, or name different people to handle different affairs.

**What is the legal responsibility of an attorney-in-fact?**

An attorney-in-fact is obligated to follow your instructions set forth in the durable power of attorney. To the extent the attorney-in-fact has discretion, he or she must act in your best interest. You can sue the attorney-in-fact for damages if he or she breaches duties owed to you.

Under Public Act 141 of 2012, before exercising authority under a durable power of attorney, an attorney-in-fact must execute an acknowledgement of the attorney-in-fact's responsibilities that contains all of the following substantive statements:

- A. I must take reasonable steps to follow the instructions of the principal.
- B. Upon request, I must keep the principal informed of my actions. I must provide an accounting to the principal upon request of the principal, to a guardian, or conservator appointed on behalf of the principal upon request of that guardian or conservator, or pursuant to judicial order.
- C. I cannot make a gift from the principal's property, unless provided for in the durable power of attorney or by judicial order.
- D. Unless provided in the durable power of attorney or by judicial order, I, while acting as attorney-in-fact, shall not create an account or other asset in joint tenancy between the principal and me.
- E. I must maintain records of my transactions as attorney-in-fact, including receipts, disbursements, and investments.

F. I may be liable for any damage or loss to the principal, and may be subject to any other available remedy, for breach of fiduciary duty owed to the principal. In the durable power of attorney, the principal may exonerate me of any liability for breach of fiduciary duty except for actions committed by me in bad faith with reckless indifference. An exoneration clause is not enforceable if inserted as the result of my abuse of a fiduciary or confidential relationship to the principal.

G. I may be subject to civil or criminal penalties if I violate my duties to the principal.

**Are there advantages and disadvantages to a durable power of attorney?**

A person has absolute control as to whom to designate as attorney-in-fact. An individual can grant limited powers. A durable power of attorney can be used to plan for the possibility of future incompetence. However, a power of attorney is a private agreement and is not overseen by any court. You do have a right to an inventory or an accounting upon request.

**Can I revoke a power of attorney once granted?**

Yes, in most circumstances. In the agreement you may specify how the power be ended. If you wish to terminate a power of attorney, you should give written notice to the attorney-in-fact and send a copy to all persons and institutions the attorney-in-fact was dealing with in your behalf, such as your bank. Unless this notice is provided, future actions taken by that attorney-in-fact could be legally binding to you.

**Can anyone else revoke a power of attorney I have granted?**

Yes. If a conservator is appointed for you by the probate court, the conservator has the right to revoke the durable power of attorney. But if you have drafted a durable power of attorney, it is less likely a conservator will ever be needed.

**Does the death of a grantor affect a power of attorney?**

Yes. All powers of attorney, ordinary or durable, generally cease when the person granting the power dies.

**Is there a method to effect the same ends as a durable power of attorney, but have the power survive death?**

Yes. You can have a lawyer draft a document known as an inter vivos or living trust. A trustee would handle your affairs if you became incompetent and the trustee would continue to manage the property after your death. The cost of setting up and maintaining the trust makes this option worthwhile only for larger estates.



## CHOOSING A NURSING HOME

Making a choice to reside in a nursing home is a difficult emotional decision. Nursing homes, however, may provide a level of care that individuals simply cannot provide on their own. Whether you are planning for your own future or assisting relatives in investigating their options, it is important to seek advice from family, friends, and experts.

In order to ensure that the decision you make regarding a nursing home is the best choice possible, it is essential to begin your search before a crisis forces you to make a hasty choice. Also, space in a nursing facility is in high demand, so you may find it difficult to immediately find anything available and to your liking. Even with time to look for a suitable nursing home, the individual's name may have to be placed on several waiting lists.

Thus, in addition to beginning your search as early as possible, it is wise to check out as many nursing facilities as possible. Although nursing homes used to be categorized by the level of service provided, that is no longer the case due to the Nursing Home Reform Amendments of the federal Omnibus Budget Reconciliation Act of 1987 (OBRA '87).

Since October 1, 1990, all nursing homes, now known as "nursing facilities," must be able to offer the same levels of care. One major advantage to this new definition of nursing facilities is that residents will no longer need to move to another facility if their health deteriorates. A first step in finding the right nursing home is to consult your doctor or hospital social worker. In addition, you may obtain a list of nursing facilities in your area through your local Long-Term Care Ombudsman Office



Michigan Department of Health and Human Services inspection reports may also provide a valuable guide for deciding on an appropriate facility. These reports are available from the department in Lansing and from the local ombudsman office. In addition, talk to people in your community such as your doctor, social worker, clergy, other friends and retirees, and the people in various community volunteer organizations. They may be able to provide important information not readily obvious from reports.

Remember, many people have had to make these decisions, so make every effort to seek out their advice and experience. Each nursing facility in Michigan must be licensed by the Bureau of Health Care Services in the Michigan Department of Licensing and Regulatory Affairs. In order to be eligible to accept Medicaid or Medicare residents, a nursing facility must also be certified by the department. If you expect Medicaid or Medicare to assist in paying for nursing facility care, make sure the facility you are interested in is certified. Nearly all Michigan nursing facilities have beds that are certified for Medicaid and many are also certified for Medicare.



# RIGHTS OF NURSING HOME RESIDENTS

Remember, too, that successfully finding the appropriate facility is only the beginning. Residents of a facility may have to change their lifestyle when they move in, but they do not lose any of their rights as individuals. Federal and state laws and regulations require nursing facilities to have written policies and procedures to implement resident rights and responsibilities. These must be made available to the resident, the resident's family, and the public. Residents also have the right to complain to the Long-Term Care Division in the Michigan Department of Licensing and Regulatory Affairs about any condition, event, or procedure without having to cite any specific violation of the law or rules. To file a complaint with the Michigan Department of Licensing and Regulatory Affairs, simply call (800) 882-6006 or (517) 241-4712.

The Michigan Public Health Code provides nursing home residents with a number of specific rights. In summary these include:

- A resident will not be denied care on the basis of race, religion, color, national origin, sex, age, handicap, marital status, sexual preference, or source of payment.
- A resident is entitled to inspect, or receive for a reasonable fee, a copy of his or her medical records.
- A resident is entitled to the confidentiality of his or her medical records.
- A resident is entitled, to the extent feasible, to privacy, consideration, respect, and dignity in treatment and in caring for personal needs.
- A resident is entitled to appropriate care and to receive information concerning his or her medical condition.
- A resident is entitled to refuse treatment to the extent provided by law.
- A resident is entitled to his or her rights as a patient or a citizen, free from restraint, interference, coercion, discrimination, or reprisal.
- A resident is entitled to information concerning any experimental procedure which may be proposed for his or her care.
- A resident is entitled to receive and examine his or her bill, regardless of funding source, and to receive information on financial assistance available through the facility.
- A resident is entitled to know who is directly responsible for his or her care, and information concerning his or her health needs and alternative treatments, as well as to be actively involved in his or her discharge planning, if appropriate.
- A resident is entitled to associate with his or her physician, attorney, or other person, and has the right to receive personal mail, unopened, on the same day it was received.
- A resident is entitled to be free from physical or mental abuse. A physician may authorize physical or chemical restraint in writing and for a specified and limited time.
- A resident is entitled to be free from providing services to the facility.

# NURSING HOME RESIDENCY

## Frequently Asked Questions

### **Do I forfeit any rights upon entering a nursing home?**

Federal and state laws have been passed to help ensure that rights of nursing home residents are respected.

### **What determines the respective responsibilities of the nursing home and the resident?**

You must be provided a written contract at the time you enter the nursing home. The contract specifies the services to be provided you, the charge for each service and who is responsible for payment.

### **Can a nursing home ask or require my child(ren) to pay the private pay rate for a period of time before the home will accept Medicaid payment for my care?**

Absolutely not; such behavior is a violation of federal law. A nursing home is also prohibited from soliciting a gift or contribution from a family member as a condition of accepting your application.

### **Are there special Medicaid eligibility rules for a married couple when one spouse needs nursing home care?**

Yes. As a result of a federal law passed in 1988, there are different rules that apply to a spouse at home, when the other spouse is living in a nursing home. The rules allow the at-home spouse to keep more income and more of the couple's assets. The Department of Health and Human Services should be able to tell you how these rules apply to you.

### **Are there any reasons I can be moved to another nursing home against my wishes?**

Yes, but only for medical reasons, non-payment of a bill or the threat of physical harm. If there is no emergency, you must be given notice of the reason for a transfer. If you disagree with this reason you may appeal the decision. Before moving, you must be offered counseling to minimize any adverse effects.

**May I know my medical condition and treatment?**

Yes. You are entitled to participate in the planning of your medical treatment. You should be fully informed of your medical condition unless the doctor believes it's not in your best interests. You have the right to refuse treatment, you may have your own doctor.

**Can I take care of my own money?**

Yes. Simply because you are a resident of a nursing home, the nursing home does not gain authority to manage, use or dispose of your money. You can control your monthly personal needs allowance and any other personal funds. You can, if you wish, have the nursing home hold your money in trust, like a savings account. You can withdraw money when you wish. You will receive a statement every three months which shows the amount of money you have, the amount spent, and the source of all funds.

**May I keep possessions?**

Yes, subject only to limitations of space.

**May I wear my own clothing?**

Yes.

**What are my rights concerning visitors?**

You may see family, friends, a lawyer— anyone you choose. You have a right to meet with any visitor in private.

**May I make private telephone calls and send and receive mail unopened?**

Yes.

**Can I make a will or sign a power of attorney?**

Yes, but as always, you should fully understand any document before signing it. Consult a lawyer or trusted friend if questions arise.

**May I vote in local, state and federal elections?**

Yes.





**What is a patient's representative?**

A patient's representative is a friend or relative you may appoint to assert many rights in your behalf. You have the right to speak for yourself and/or appoint a representative to speak for you.

**How can I find out what other rights I have?**

You must be given a copy of your rights when you enter the nursing home. A copy should also be posted on a bulletin board of the nursing home. Ask if you do not understand any of your rights.

**To whom should I complain about a violation of my rights?**

If you encounter problems requiring immediate action such as physical abuse, neglect or improper diet, speak with the director of nursing or the administrator of the home, or call the Department of Licensing and Regulatory Affairs Bureau of Community and Health Systems Complaint Hotline, (800) 882-6006. For non-emergencies, get the support of a trusted aide or a family member. If a residents' council exists, consider bringing the issue up for discussion.

If you are not satisfied, call or write the Michigan Department of Licensing and Regulatory Affairs. You may also contact the Long-Term Care Ombudsman Office for your county. You can call (866) 485-9393 to contact the statewide Long-Term Care Ombudsman program.



# MICHIGAN STATUTORY WILL

## Frequently Asked Questions

### 1. What happens if I die without a Will?

With certain exceptions, your possessions are distributed according to state law.

### 2. What can I accomplish by making out a Will?

You can choose who is to receive your property; select someone to serve as personal representative (formerly known as executor); and appoint a guardian and conservator for your children under age 18.

### 3. Does having a Will avoid probate procedures after my death?

No. The issue of whether probate procedures must be followed is not solely dependent on whether or not you have a Will.

### 4. What property is not subject to probate procedures?

Jointly owned property such as money held in a joint bank account; real estate, if your spouse's name or a joint tenant's name is on the deed; life insurance benefits, if a person living at the time of your death was named as a beneficiary in the policy; and some other assets that are jointly held or have beneficiary designations.

### 5. If property is specified in my Will, am I prevented from giving it away or selling it during my life?

No. Your Will has absolutely no effect until you die. If you sell or give away property mentioned in the Will, that provision of the Will is simply ignored.

### 6. Are there different types of Wills?

Yes. Each type is equally valid if done precisely in accordance with the law.

**7. What are some of the things I can accomplish through a Statutory Will?**

(a) You can leave up to two cash gifts of any amount to people or charities. (b) You can write a list of personal and household items and name the person or entity to receive each item. (c) You can ensure that the rest of your property goes to your spouse. If he or she dies before you, the property is to be distributed equally among your children. (d) You can select a personal representative to administer your property. (e) You can appoint a guardian and conservator in case you and your spouse both die before your children reach age 18.

**9. I have a wife and two young children. Might a Statutory Will be appropriate for my purposes?**

Perhaps. A Statutory Will might be appropriate if you do not have extensive assets and, therefore, do not need tax planning. In a Statutory Will, you can appoint a guardian for your children and a conservator for your children’s assets.

**10. I would like to leave my favorite niece an antique brooch. Can I do this with a Statutory Will?**

Yes. A Statutory Will allows you to leave gifts of personal items by making a list of the items and the names of the persons you want to receive each item.

**11. I am a widow with no children. Could a Statutory Will be appropriate for me?**

If you do not have substantial assets and you do not object to the limited options for disposing of your property, you may want to use the Statutory Will form.

**12. I own a house, a condominium, and much stock. Should I use a Statutory Will?**

Perhaps not. A Statutory Will is not designed to reduce federal or state taxes on your estate. If you have very substantial assets, you may wish to check with an attorney to see if tax planning is recommended.

**13. I am married for the second time and my husband and I each have children from our first marriages. Would a Statutory Will be appropriate for my purposes?**

Probably not. The Statutory Will provides that your estate goes to your husband if he survives you. For that reason, the Statutory Will may not give you an adequate way to provide for the children from your first marriage. Speaking with an attorney is likely a good idea for a person with children from a previous relationship.





**14. I have rather complicated business interests, which I wish to pass on through my Will. Would a Statutory Will be appropriate for my purposes?**

No. A Statutory Will does not provide for any specific business planning.

**15. What should I do if a Statutory Will doesn't meet my needs?**

Contact an attorney with knowledge of estate planning. He or she can draft a Will to meet your specific needs.

**16. How can I find a good attorney?**

(a) If you have dealt with an attorney in the past and were satisfied, contact that person. An attorney who does not handle estate planning may recommend someone who does.

(b) Ask friends, neighbors, or relatives. (c) Ask a person you respect, such as a religious leader, or call an organization such as a consumer group or a civic organization. (d)

Call the county or state bar referral service, which will provide you with the names of attorneys. (e) Consult the business section of your telephone directory or newspaper classified section. Don't be intimidated. Don't be afraid to "shop around" for someone you are comfortable with and whose services you can afford.

**17. After the Will is completed, where should I keep it?**

One option is to file it in probate court in the county you live in; such filings cost very little. Wherever you keep the Will, it is a good idea to attach the list of personal items to the Will. You may want to give a copy of the Will to the person you have selected as Personal Representative. If you file the Will with a court, you should file a new copy any time you make a change.



**18. Can I make changes to my Statutory Will?**

Yes. Since a Will has absolutely no effect until you die, you can change the Will as often as you desire during your lifetime. But do not make corrections on the Will. You can either complete a new Statutory Will, or have a codicil (an amendment to the old Will) or have an entirely new Will drafted by an attorney. If you sign a new Will, destroy copies of the old one. You can change the list of personal property items at any time. Make sure to attach the most recent list to your Will. It is probably best to write a whole new list if you decide to make changes.

**19. If I move from Michigan, would my Statutory Will still be valid?**

Probably yes. It would be a good idea to check with an attorney who practices law in the state of your new residence.

**20. Does my Statutory Will need to be notarized?**

No, but it does need to be witnessed.



## LEGAL AND STATE BAR REFERRAL ASSISTANCE

The following organizations can help you with legal services and referrals. For more information, please contact the State Bar of Michigan toll-free at (800) 968-1442 or the State Bar Lawyer Referral Service toll-free at (800) 968-0738.

### **CLINTON TOWNSHIP**

**Lakeshore Legal Aid Counsel and Advocacy Law Line**  
**21885 Dunham Road, Suite 4 Clinton Township, MI 48036**  
**Toll-Free: (888) 783-8190**

### **MT. CLEMENS**

**Macomb County Bar Association**  
**40 N. Main Street, Suite 435 Mt. Clemens, MI 48043**  
**Phone: (586) 468-2940 Referral**  
**Phone: (586) 468-8300 Fax: (586) 468-6926**  
**Serving Counties: Macomb and St. Clair**







MACOMB COUNTY PROSECUTING ATTORNEY

**PETER J. LUCIDO**

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