

Part II	REAL AND PERSONAL PROPERTY AND DOMESTIC RELATIONS
Title II	DESCENT AND DISTRIBUTION, WILLS, ESTATES OF DECEASED PERSONS AND ABSENTEES, GUARDIANSHIP, CONSERVATORSHIP AND TRUSTS
Chapter 190B	MASSACHUSETTS UNIFORM PROBATE CODE
Article V	PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY
Section 5-309	POWERS, DUTIES, RIGHTS AND IMMUNITIES OF GUARDIANS, LIMITATIONS

Section 5–309. [Powers, Duties, Rights and Immunities of Guardians, Limitations.]

(a) Except as limited pursuant to section 5–306(c), a guardian of an incapacitated person shall make decisions regarding the incapacitated person's support, care, education, health and welfare, but a guardian is not personally liable for the incapacitated person's expenses and is not liable to third persons by reason of that relationship for acts of the incapacitated person. A guardian shall exercise authority only as necessitated by the incapacitated person's mental and adaptive limitations, and, to the extent possible, shall encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage personal

affairs. A guardian, to the extent known, shall consider the expressed desires and personal values of the incapacitated person when making decisions, and shall otherwise act in the incapacitated person's best interest and exercise reasonable care, diligence, and prudence. A guardian shall immediately notify the court if the incapacitated person's condition has changed so that he or she is capable of exercising rights previously limited. In addition, a guardian has the duties, powers and responsibilities of a guardian of a minor as described in section 5–209(b), (c), (d) and (e).

(b) A guardian shall report in writing the condition of the incapacitated person and account for funds and other assets subject to the guardian's possession or control within 60 days following appointment, at least annually thereafter, and when otherwise ordered by the court. A report shall briefly state:

- (1) the current mental, physical and social condition of the incapacitated person;
- (2) the living arrangements for all addresses of the incapacitated person during the reporting period;
- (3) the medical, educational, vocational and other services provided to the incapacitated person and the guardian's opinion as to the adequacy of the incapacitated person's care;
- (4) a summary of the guardian's visits with and activities on the incapacitated person's behalf and the extent to which the incapacitated person participated in decision-making;
- (5) if the incapacitated person is institutionalized, whether the guardian considers the current treatment or habilitation plan to be in the

incapacitated person's best interests;

(6) plans regarding future care; and

(7) a recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.

(c) The court shall establish a system for monitoring guardianships of incapacitated persons, including the filing and review of annual reports.

(d) The court may appoint a guardian ad litem pursuant to section 1-404 to review a report, to interview the incapacitated person or guardian, and to make such other investigation as the court may direct.

(e) A guardian, without authorization of the court, may not revoke a health care proxy of which the incapacitated person is the principal. If a health care proxy is in effect, absent an order of the court to the contrary, a health-care decision of the agent takes precedence over that of a guardian.

(f) No guardian shall be given the authority under this chapter to admit or commit an incapacitated person to a mental health facility or a mental retardation facility as defined in the regulations of the department of mental health.

(g) No guardian shall have the authority to admit an incapacitated person to a nursing facility, except upon a specific finding by the court that such admission is in the incapacitated person's best interest, unless: (1) the admission shall not exceed 60 days; (2) any person authorized to sign a medical certificate recommends such admission; (3) neither any interested person nor the incapacitated person objects; (4) on or before such admission, a written notice of intent to admit the

incapacitated person to a nursing facility for short term-services has been filed by the guardian in the appointing court and a copy thereof has been served in-hand on the incapacitated person and provided to the nursing facility; and (5) the incapacitated person is represented by counsel or counsel is appointed forthwith. The notice of intent to admit the incapacitated person to a nursing facility for short-term services shall be on a form prescribed by the chief justice of the probate and family court.