

Guardianship?

If, When, Why and How to File a Petition

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Monday-Friday, 8am-4pm; Tuesday 8am-8pm

Q#1: Should I File for Guardianship?

Q#2: What is Guardianship?

- Guardianship is a formal court process that is used to appoint someone (a guardian) to act on behalf of the court to manage a disabled person's personal care and/or property
- Guardianship is obtained through a court order, which is given by a judge after notice to all interested parties and at least one hearing.

Q#3 (All Play): So...to get guardianship, I have to:

1. Decide if it's a reasonable given my family dynamic
2. Do a Petition
3. File it with a Court (\$165.00)
4. Serve Interested Parties AND
5. Attend at least one hearing?

(True or False?)

Q#4: Is there more than one type of Guardianship?

- Guardianship of the Person
- Guardianship of the Property

Q#5: What is the legal standard to get a guardianship of the person?

(Legal Standard for Alleged Adult Disabled Person = Clear & Convincing Evidence)

- A person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or addiction to drugs

AND

- **No less restrictive form of intervention is available** which is consistent with the person's welfare and safety

Q#6: What is the legal standard to get a guardianship of the property?

Legal Standard for Alleged Adult Disabled Person = Preponderance of the Evidence

- Person is unable to manage his/her property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, detention by a foreign power, or disappearance

AND

- The person has or may be entitled to property or benefits which require proper management

“Guardianship Estate”

Q#7: If my child wants to contest my attempt to get guardianship, what rights do they have in doing so?

- Formal, public, legal and at times complicated process
 - Maryland Rules, Title 10. Guardians and Other Fiduciaries
- Alleged disabled persons have:
 - Right to notice
 - Right to counsel
 - Trial at a place to which the person has reasonable access
 - Guardianship of the person
 - A “Show Cause” Hearing is required
 - Can be set for jury trial
 - Right to be present at the hearing
 - Right ask for a closed hearing
 - Right to present evidence and examine witnesses

Q#8: Ok, I'm Thinking About Filing...Who Are The Parties to A Guardianship Petition?

- Petitioner(s)
- Respondent
 - “Alleged” Disabled Person (presumption of capacity)
- Interested Persons

Q#9: What are...Interested Persons?

- Include:
 - Other Parent
 - Adult Siblings, spouses, children and other lawful heirs
 - Health care agent, if any
 - Government agencies (SSA)
 - Local Department of Social Services (DHS)
 - U.S. Department of Veterans Affairs
 - Others considered appropriate by the court
- Guardianships of the property:
 - Current income beneficiary of the fiduciary estate
 - Fiduciary and co-fiduciary of the fiduciary estate
 - Creator of the fiduciary estate
- Others (if they desire to be part of the case) must intervene and seek court designation

Q#10 (All-Play): Well, do these interested persons have rights too?

- Rights during guardianship proceedings:
 - Notice (i.e. they have to be served)
 - Can object to the need for a guardian
 - Can object to appointment of proposed guardian
- Post-appointment:
 - Invoke jurisdiction of the court to resolve questions concerning the estate or its administration
 - Petition to require a guardian of the property to file bond, provide an accounting, direct distribution
 - Petition to remove and appoint a substituted or successor guardian
 - Petition for other appropriate relief

Hey, Let's Do A Guardianship Petition!

- Form petition: Md. Rule 10-112
 - *Have a look at your handout!*

Q#11: Ok, so...what *are* Certificates of (In)Competency?

- Must have TWO: EITHER two doctors, OR one doctor and one psychologist or one doctor and one LICSW
- At least one examination or evaluation must occur within 21 days before filing a petition for guardianship of an alleged disabled person
 - Forms online
- Admissible as substantive evidence without testimony
- Appointment of Health Care Professional by Court
 - Alleged disabled person resides with or under the control of a person who refuses to permit the examination or evaluation

pet

CIRCUIT COURT FOR _____, MARYLAND
City/County

Located at _____ Court Address Case No. _____
In the Matter of _____

Name of Alleged Disabled Person Docket reference

PHYSICIAN'S CERTIFICATE
(Md. Rule 10-202(a)(2))

NOTE TO PHYSICIAN: A petitioner will use this certificate in a legal proceeding to request a guardian for the patient named below. The petitioner must submit the original certificate and a copy of the certificate to the court. The certificate must be specific and detailed and based on your personal examination of the patient contained in the certificate that may interfere with health care, food, clothing, shelter, or property. You may complete it under your supervision. Attach additional sheets, if necessary. Your testimony about this information may be required at a hearing.

PATIENT'S NAME: _____
PATIENT'S ADDRESS: _____
I, _____, _____
Telephone Number _____, am a _____ Year
School of Medicine. I am licensed to practice in _____
I am board certified in _____
My history of involvement with the patient is as follows: _____

Examination and Diagnosis

I personally examined the above-named patient on _____ (include date of most recent examination, as well as any other relevant visits). The most recent examination lasted approximately _____ Time
procedures: _____

CC-GN-019 (01/01/2018)

CIRCUIT COURT FOR _____, MARYLAND
City/County

Located at _____ Court Address Case No. _____
In the Matter of _____

Name of Alleged Disabled Person Docket reference

PSYCHOLOGIST'S CERTIFICATE
(Md. Rule 10-202(a)(2))

NOTE TO PSYCHOLOGIST: A petitioner will use this certificate in a legal proceeding to request a guardian for the patient named below. The petitioner must submit the original certificate and a copy of the certificate to the court. The certificate must be specific and detailed and based on your personal examination of the patient contained in the certificate that may interfere with the patient's ability to make responsible health care, food, clothing, shelter, or property. You may complete the form yourself or have another person complete it under your supervision. Attach additional sheets, if necessary. Your testimony about this information may be required at a hearing.

PATIENT'S NAME: _____
PATIENT'S ADDRESS: _____
I, _____, _____
Psychologist's Name _____
Address _____
Telephone Number _____, am a _____ graduate of _____ School

I am licensed in the United States in the following state(s): _____
My license number is: _____ My specialty is _____
I have known this patient for _____ Length of time My history of involvement with the patient is as follows: _____

Evaluation and Diagnosis

I personally evaluated the above-named patient on _____ (include date of most recent evaluation, as well as any other relevant visits). The most recent evaluation lasted approximately _____ Length of time
I performed or ordered the following tests and/or procedures: _____

CC-GN-021 (01/01/2018)

CIRCUIT COURT FOR _____, MARYLAND
City/County

Located at _____ Court Address Case No. _____
In the Matter of _____

Name of Alleged Disabled Person Docket reference

LICENSED CERTIFIED SOCIAL WORKER-CLINICAL (LCSW-C) CERTIFICATE
(Md. Rule 10-202(a)(2))

NOTE TO LICENSED CERTIFIED SOCIAL WORKER-CLINICAL (LCSW-C): A petitioner will use this certificate in a legal proceeding to request a guardian for the patient named below. The petitioner must submit the original certificate. Your answers must be specific and detailed and based on your personal evaluation of the patient. Address each issue contained in the certificate that may interfere with the patient's ability to make responsible decisions about health care, food, clothing, shelter, or property. You may complete the form yourself or have another person complete it under your supervision. Attach additional sheets, if necessary. Your testimony about this information may be required at a hearing.

PATIENT'S NAME: _____
PATIENT'S ADDRESS: _____
I, _____, _____
LCSW-C's Name _____
Address _____
Telephone Number _____, am a _____ graduate of _____ School

I am licensed in the United States in the following state(s): _____
My license number is: _____ My specialty is _____
I have known this patient for _____ Length of time My history of involvement with the patient is as follows: _____

Evaluation and Diagnosis

I personally evaluated the above-named patient on _____ (include date of most recent evaluation, as well as any other relevant visits). The most recent evaluation lasted approximately _____ Length of time
I performed or ordered the following tests and/or procedures: _____

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Estates & Trusts Art., § 13-705; Md. Rules 10-202 and 10-301

Q#12: OK! I've Done A Petition. Now....which court do I file it in?

- Jurisdiction
 - **File in a Circuit Court** – Exclusive jurisdiction over guardianships of alleged adult disabled persons
 - If filing in Montgomery County: 50 Maryland Ave, Suite #1460, \$165, cash or check only, M-F 8:30am until 4:15pm.
- Venue
 - Guardianship of the person
 - Resident – where the minor or alleged disabled person resides or is hospitalized
 - Non-resident – where minor or alleged disabled person is physically located
 - Guardianship of the property
 - Resident – where the minor or alleged disabled person resides (even if temporarily absent)
 - Non-resident – where the petition for guardianship of the person may be filed OR the location of property owned by the minor or disabled person

Q#13 (All-Play): I've filed. And I got "Show Cause Orders" in the mail with a Show Cause Hearing Date. I'm good, right? I just show at the hearing?

- Md. Rule 10-104. Show Cause Order
 - 20 day answer period (unless ordered otherwise)
 - Date, time, place of hearing
 - Generally the Court sets and includes date of hearing in show cause order
 - Serve (YOU HAVE TO SERVE THE INTERESTED PARTIES!):
 - Show-Cause Order
 - Petition & Attachments
 - Advice of Rights
 - Notice to Interested Persons
 - Normally service is required to be by certified mail, or hand-delivery

Q#14: Wait a tick. So, my child will have a lawyer and can actually fight me on this?

- Md. Rule 10-106. Attorney for Disabled Person
 - Alleged Disabled Persons
 - Counsel of own choosing or court-appointed
 - Court-appointed attorneys eligibility requirements:
 - Member of the bar in good standing
 - Financial responsibility
 - Training requirements (unless waived)
 - *Maryland Guidelines for Court-Appointed Attorneys in Guardianship Proceedings*

Q#15: What is the role of the lawyer?

- Protect the due process rights of alleged disabled persons
- Advocate for the client's position even if that position conflicts with the attorney's judgment as to what the best interest of the client
 - Exception: Reasonable belief that a client with diminished capacity is at risk of substantial physical, financial, or other harm
 - Limits: Protective action necessary to protect the client

Q#16: What is the First Hearing, and what do I do?

- Called a “Show Cause” Hearing
- Show Up & explain why the person you are seeking guardianship over lacks capacity to manage their own care
- You should expect to “win”, assuming that neither your child nor any “interested party” comes to “show cause” why you should not have guardianship (in which case an actual “trial” can be set by a judge)

Q#17: Hooray! I won an Order! I can pretty much manage everything now, right?

- Adult Disabled persons – “only those powers necessary to provide for the demonstrated need of the disabled person”
 - Estates & Trusts Art., § 13-708 – Rights, duties, and powers that may be granted
 - Limitations
 - Change in classification abode
 - Commitment to a mental facility (involuntary)
 - Medical procedures involving a “substantial risk to the life”

Guardian of the Person: Possible Rights, Powers, Duties

Determine where the minor or disabled person lives

- Change in classification of abode requires court approval

Provide for the minor or disabled person's care, comfort, and maintenance

- Food, clothing, social, recreational, and training or educational needs

Care for personal effects

- Take reasonable care of clothing, furniture, vehicles, and other personal items and taking steps to protect property if needed

Arrange for services and care

- Pursuing government or private services and resources that promote the minor or disabled person's independence, well-being, and safety

Request funds for care from the guardian of the property

- Compel a guardian of the property to apply funds for the minor or disabled person's care, comfort, and maintenance

Give necessary consent or approval for medical or other professional care

- Coordinating and giving consent for medical or other professional care, treatment, counseling, or services

Order Appointing Guardian of the Property

- Fiduciary powers
- Without court authorization, may:
 - Pay or apply income and principal from the guardianship estate as needed for the minor or disabled person's clothing, support, care, protection, welfare, and rehabilitation
 - Pay or apply income and principal for the benefit of persons legally dependent and (with court approval) for the benefit of persons maintained or support by the disabled person prior to appointment of a guardian
- Limitations
 - Anything the court, common law, statute, or governing instrument does not authorize
 - Attorney fees over \$50

Guardian of the Property: Fiduciary Powers

- Invest, sell, mortgage, exchange, or lease property (real or personal)
- Borrow money
- Compromise debt
- Retain assets
- Receive assets
- Perform contracts
- Satisfy pledges
- Deposit funds
- Vote stocks
- Insure property
- Pay taxes
- Stock subscriptions
- Employ agents
- Engage in judicial proceedings
- Engage in partnership
- Incorporate
- Convert sole proprietorship
- Exercise options
- Pay claims
- Pay mortgage
- Release mortgage
- Exercise *inter vivos* powers
- Hold stock
- Comply with environmental law
- Donate to a conservation easement

Guardian of the Property: Powers (in general)

Day-to-day management

- Pay bills, arrange for transportation, clothing, housing, support, care, protection, welfare, and rehabilitation needs

Collecting income

- Including rents, pensions, Social Security, and debts owed

Managing property

- Including rental property (e.g., entering into and enforcing leases, making repairs/improvements, collecting income, hiring agents)

Paying Taxes

- Prepare and file state and federal taxes before April 15th of each year

Financial Planning

- Ensure guardianship estate covers current and future needs (hiring accountants, financial advisors, other professionals)

Guardian Orientation and Training Requirements

- Orientation Program for Court-Appointed Guardians (video)
 - www.mdcourts.gov/guardianship
- Post-Appointment Training Program
 - Guardians of the person – within 120 days of appointment
 - Guardians of the property – within 60 days of appointment
 - Attorney-Guardians – additional ethics (video requirement)
- Website: checklists, forms, resources, video series



Q#18 (All-Play): After I get the Order, I'm done with all this court stuff, right?

- Filing and Reporting Requirements of Guardians of the Person
 - Annual Report – Guardian of minor or disabled person
 - Due each year within 60 days of the anniversary of appointment
- Filing and Reporting Requirements of Guardians of the Property
 - Inventory
 - Due within 60 days of appointment
 - Fiduciary's Account
 - Due each year within 60 days of the anniversary of appointment

Q#19: Ok, again: I'm the parent, and I'm just trying to do the right thing for my child. I really have to go through all this?

In reality the court is the guardian; an individual who is given that title is merely an agent or arm of that tribunal in carrying out its sacred responsibility.