

INSTRUCTIONS FOR APPOINTMENT OF A GUARDIAN – ADULT

These standard instructions are for informational purposes only and are not meant to be legal advice about your specific case. If you choose to represent yourself, you must follow the same procedures and rules as an attorney.

GENERAL INFORMATION

1. Usually, you must file a guardianship case in the District Court in the county where the adult in need of a guardian lives. If a mentally incompetent person is admitted to an institution because of a court order, then you may choose to file in the county where that court order was issued.
2. Any person may file the case for guardianship of an adult. There is a preference for certain people to be appointed as guardian of an incompetent person. Persons qualified to serve as guardian have preference to be appointed guardian in the following order:
 - a. A person nominated by the proposed ward, **IF** at the time of the nomination the Proposed Ward was competent and had the capacity to make a reasonably intelligent choice;
 - b. The spouse of the proposed ward;
 - c. A person nominated in the will of the proposed ward's deceased spouse;
 - d. A parent of the proposed ward;
 - e. An adult child of the proposed ward;
 - f. A person named in the will of the proposed ward's deceased parent;
 - g. A relative of the proposed ward who lived with the respondent for more than six months during the year before the filing of the petition;
 - h. A relative or friend who has demonstrated a sincere, longstanding interest in the welfare of the proposed ward;
 - i. Any other person whose appointment would be in the best interests of the proposed ward;
 - j. A person with a guardianship program for incompetent persons.
3. If the Proposed Ward has a large amount of income or assets, such as real estate or stocks, you may also need to file for conservatorship in order to manage the money or assets.
4. The Court may appoint a Guardian for an adult if the Court finds the proposed ward is incompetent or filed a voluntary petition, the appointment of a guardian is necessary and the guardianship is the least restrictive and most appropriate under the circumstances. You must be prepared to testify and give enough evidence to prove these things to the court.

5. Make sure to read any answers to **Frequently Asked Questions** below. They will help you to better understand the Guardianship process.
6. For additional information, please review Wyoming Statutes 3-1-101 through 3-2-303.

COMMON TERMS

1. The Petitioner is the person who filed the Petition for Guardianship (if you are filing the petition to be appointed Guardian, then you are the Petitioner).
2. The Respondent is the Proposed Ward, who is the adult in need of a guardian.
3. "Guardian" means a person who has been appointed by the court to exercise the powers granted by the court. The term includes a plenary (full), limited, emergency and standby guardian, but does not include a guardian ad litem (see below for more information on Guardian Ad Litem).
4. "Ward" means an individual for whom a guardian or conservator has been appointed by the court.
5. "Proposed Ward" is the person who is need of a guardian; in this type of case, an incompetent adult.
6. "Incompetent Person" means an adult who is unable unassisted to properly manage and take care of himself/herself or his/her property as a result of medical conditions of advanced age, physical disability, disease, the use of alcohol or controlled substances, mental illness, mental deficiency or intellectual disability.
7. An "involuntary petition" is any petition filed by someone other than the Proposed Ward. If the Proposed Ward files a petition on his or her own behalf, the petition would be "voluntary".
8. "Order" means the official decree signed by the Judge. If you are granted Guardianship of the adult, you will want to keep this document handy at all times, to prove that you are the legal guardian.
9. "Letters" means formal notice identifying your authority as Guardian. You will need this proof to health care and other service providers, and for other legal situations in which you need to show authority to make decisions for the Ward.

FEES

A filing fee of \$70.00-100.00 is required. Call the local district court clerk in your county for the exact amount. If you feel you are unable to pay, you may complete the Affidavit of Indigency and Request for Waiver of Filing Fees and all Fees Associated Therewith. The Judge will determine whether or not the court costs must be paid. You can get a copy of this form from the district court clerk's office. This form can also be found on the Supreme Court website, <http://www.courts.state.wy.us> , in "Miscellaneous Forms" (Packet 10) on the Family Law Pro Se Forms page under the Self Help Center.

FORMS

Read these instructions carefully to determine what forms you may need. You may not need all of the listed forms. **Check with the District Court** where you plan to file your case to determine if they have any special requirements. You can find a directory of the District Courts here:

<http://www.courts.state.wy.us/DistrictCourtDirectory.aspx>

STEPS TO FILING YOUR CASE

Step 1: Complete the Forms.

Before you file, make sure that you make copies of all the completed forms.

- **Civil Cover Sheet**

- ✓ For part I, fill in the petitioner's name address and name of the adult in need of a guardian, just like the caption on the other forms. You will receive the docket number when you file.
- ✓ For part II, you should check the box for "Guardianship" listed under "Probate."
- ✓ For part III, list any related cases.
- ✓ For part IV, you may leave the "Amount in Controversy" blank.

- **Petition for Appointment of Guardian**

- ✓ The Petitioner must complete all applicable sections on the form.

- **Summons and Return**

- ✓ This completed form will need to be served upon the Proposed Ward, his/her custodian and the proposed guardian (if the proposed guardian is anyone other than the person filing the petition) along with a file-stamped copy of the Petition. See below in the FAQ section for more information on "service". The following interested persons must also be served. The Proposed Ward's:

- Parents
- Spouse
- Adult Children
- Any other person the Court orders to be served.

- **Voluntary Petition**

- ✓ A guardian may be appointed by the court upon a voluntary petition filed by the Proposed Ward. The Proposed Ward **MUST** be competent at the time of the completing of the Voluntary Petition. If the Proposed Ward is incompetent, the Proposed Ward will not be deemed competent to file a voluntary petition.
- **Consent or Nomination of Guardian**
 - ✓ An adult can consent to the appointment of a guardian or nominate a guardian by using this form.
 - ✓ The Proposed Ward should be competent at the time of signing this form.
 - ✓ If the Proposed Ward signs this form, it must be signed **in the presence of a Court Clerk or Notary Public.**
- **Motion to Appoint Guardian Ad Litem**
 - ✓ Unless the Proposed Ward is filing a voluntary petition, a Guardian Ad Litem will probably need to be appointed for the Proposed Ward. The judge may appoint a Guardian Ad Litem, even if no one requests one.
 - ✓ The Guardian Ad Litem doesn't represent you, but, instead, represents the Proposed Ward and helps find out what is in the Proposed Ward's best interest.
 - ✓ **IMPORTANT: Be aware that if a Guardian Ad Litem is appointed, you will very likely be required to pay his or her fees.**
- **Order Appointing Guardian Ad Litem**
 - ✓ If you file a Motion to Appoint a Guardian Ad Litem, you must file this proposed order with your Motion. You only need to fill out the top portion of this order. Leave the date and signature for the Judge to sign.

Step 2: You are Ready to File your Papers with the Court.

Provide the Court with the documents completed as described in Step 1 above and pay the filing fee. You will need to make copies of the documents for each of the following persons and give them notice of the filing (see below for how to serve):

- a. The Proposed Ward;
- b. The Proposed Ward's custodian;
- c. The proposed guardian (unless the proposed guardian is the person filing the Petition);

- d. Each living parent of the Proposed Ward;
- e. The spouse of the Proposed Ward;
- f. Any living adult children of the proposed Ward;
- g. Any Guardian or Conservator currently acting for the Proposed Ward in this state or elsewhere, or any person holding a Power of Attorney or Medical Power of Attorney concerning the Proposed Ward.

Step 3: Notice to Interested Persons

If you know where the parents, spouse, adult children or other interested persons (above) are located, you will need to serve them by having a sheriff or process server hand deliver the documents to them. See below in the FAQ section for more information on service. In addition to copies of the above forms, you will also need to prepare this form:

- **Return (second page of the Summons)**
 - ✓ This document must be filled out by the sheriff or process server that serves the Petition upon the interested persons. It must be notarized or signed by the clerk of court and filed with the clerk of court after service is completed.

OR

You can avoid paying for personal service if the interested person(s) agree to the service. However, please be aware that the Proposed Ward cannot agree to service if an involuntary petition (a petition filed by someone other than the Proposed Ward) is filed. A Proposed Ward should be served by the Sheriff or a process server as described above.

Each person who agrees to accept service must complete the following form:

- **Acknowledgment and Acceptance of Service**
 - ✓ This form may be signed by the interested person who is required to receive notice of the filing of the petition. If the person agrees, you will not need to have the summons and petition formally served on him or her. See the FAQ section below for more information on “service”.
 - ✓ You must still provide file-stamped copies of the *Summons* and *Petition* to each party required to receive notice even if they accept service with this form.
 - ✓ If the interested person signs this form, it must be signed **in the presence of a Court Clerk or Notary Public.**

OR

If you do not have a current address for the interested persons required to receive notice, or if their identity is not known and cannot be found with reasonable efforts (diligence), you must publish the notice of the petition in the newspaper. You will have to prove to the court that you tried to locate the person. You should look in the phone book, search the internet and Facebook, contact prior employers, family, friends, etc. to locate a current address. You will need these forms:

- **Motion and Affidavit for Service by Publication**
 - ✓ If you do not know how to locate a person who is required to be served, you will need to complete this form and the next two forms.
 - ✓ You must detail the efforts you made to obtain an address.
- **Order for Service by Publication**
 - ✓ Fill out the top part of this form. The Judge will sign and date the order.
- **Notice of Publication**
 - ✓ Complete this form and have it published for four (4) consecutive weeks in a newspaper of general circulation in the county where the hearing is to be held.
 - ✓ Do not sign where the Clerk needs to sign.
- **Affidavit Following Service by Publication**
 - ✓ You will complete this form after you have published the notice in the newspaper for four (4) consecutive weeks, and obtained the **Affidavit of Publisher** from the newspaper.

Step 4: Wait for the Response Time to Expire.

Once the interested persons have been properly served, you must wait for the response time to expire. If the other party was personally served or acknowledged service, he or she has **20 days to respond, or 30 days if served out of state**. If the other party was served by publication, he or she has **30 days after the last day of publication** to respond. Once the time to file a Response has expired, you can move forward with your case.

Step 5: Ask for a Hearing Date

Most guardianship cases will require a hearing, even if no one files a response or objection. The Clerk or Judge's office will tell you if a hearing is required. **DO NOT ASSUME THAT THE HEARING WILL BE SCHEDULED AUTOMATICALLY**. Once the response time has expired (see above), you will have to formally request a hearing date from the Court.

Your court may have forms to request a hearing date, or you can fill out these forms to request a hearing date:

- **Request to Set Hearing**
- **Notice of Hearing**
 - ✓ The court clerk or judicial assistant will fill in the date, time and courtroom/Judge for the hearing.
 - ✓ You must send a copy of the hearing notice to all interested parties who consent or respond to the Petition, or anyone else required by the Judge. You will need to provide an addressed, stamped envelope for you and everyone else that must receive a notice of the hearing.
 - ✓ You will need to send notices to:
 - Any person who consented to the petition (although they do not need to attend the hearing);
 - Anyone who responded to the petition; and
 - Any other person required by the Judge or Court.

NOTE: Individual courts have different policies on scheduling, so it is important to contact the court where your case is filed to determine when and how to schedule your appearance in front of the Judge.

Step 6: Before the Hearing.

Default. If the other interested persons were served, but did not sign a notarized consent or did not respond to the petition, then you will want to have the Clerk enter a default into the case record before the hearing. You should prepare and file these forms with the Clerk of Court:

- **Affidavit for Entry of Default**
 - ✓ This form must be signed by the Petitioner **in the presence of a Court Clerk or Notary Public.**
- **Application for Entry of Default**
 - ✓ Make sure you give the correct date when the person was served or signed the affidavit acknowledging service.
- **Entry of Default**

- ✓ If you know the respondent's address, you must give it, along with an addressed, stamped envelope.

Pretrial Disclosures. If someone responded to the Petition and is objecting to the guardianship, you will need to prepare your evidence in advance. See below for more information about the evidence you should present at the hearing. Prior to the hearing, the Judge may order that you send a list of your witnesses and other evidence to the court and to any opposing party a certain number of days before the hearing or by a specific date. If you do not follow these instructions, the judge may not allow you to use your witnesses or other evidence. You can use this form to prepare your evidence lists for the opposing party:

- **Pretrial disclosures**

Step 7: Prepare for the Hearing.

Regardless of whether anyone objects or not, you will need to complete these forms to bring to the hearing:

- **Proposed Order**

- ✓ This is the form the judge will fill out and sign (or you may be asked to fill out the order after the hearing). Complete only the top portion (case name and number) of this form before the hearing.
- ✓ Bring it to the court hearing and present it to the judge or clerk when he or she requests it.

- **Oath of Guardian**

- ✓ **Do not sign the Oath of Guardian** until the day of the hearing. Fill out the top portion only. After the hearing, you will take it over to the court clerk, and sign it in her/his presence.

- **Letters of Guardianship**

- ✓ Fill out the top portion. This form will be signed by the court clerk, and indicates when the guardianship expires, and is proof that you are the legal guardian of the ward.

Step 6: The Hearing

The Petitioner must appear at the hearing and should be prepared to present evidence as to why the Guardianship is necessary and in the Proposed Ward's best interest.

- a. Be prepared to take notes.

- b. Be prepared to present evidence of why the guardianship is needed.
- c. You must prove to the court that the Proposed Ward is incompetent, unless a voluntary petition was filed by the Ward. Be prepared to show evidence that the Proposed Ward is unable to care for himself/herself without assistance. You may need to offer exhibits such as medical records, social services records, and testimony of witnesses such as friends, family, or medical professionals, educators and caregivers of the Proposed Ward.
- d. You must also show evidence that the type of guardianship you are asking for is the most appropriate and least restrictive guardianship under the circumstances. You must show that the guardianship is in the Proposed Ward's best interest.
- e. You must also be prepared to show the court that the Proposed Guardian is a fit and proper person to serve as a guardian.
- f. If the Court appoints a Guardian, the Court will issue Letters of Guardianship as a formal notice of the appointment and provide you with a copy of the Order Appointing Guardian. The Judge may ask you to complete the Letters and Order forms and other documents. Make sure that you listen carefully and write down exactly what the Judge says when the Judge makes his or her decision.
- g. You may need certified copies of the Letters and Order. The number needed will vary, depending on your circumstances. The Clerk can make certified copies for you (there may be a fee for extra copies).
- h. Copies of the Order must be provided to all interested persons identified in the Order.

Step 7: Requirements after the Court Appoints a Guardian.

Forms:

- **Periodic Guardian's Report**
 - ✓ Refer to the Order Appointing Guardian for and Adult regarding completing the periodic reports. The purpose of the annual report is to report to the Court and interested persons as to the well-being of the Ward.
 - ✓ The Guardian's Report must be provided to the persons listed in the Order of Appointment. You must give notice of the filing of the guardian's report, together with a copy of the report to those listed in the Order of Appointment within **ten (10) days** of filing the report with the court.

If the Court or Judge has a form they want you to use, then you should use that one. Remember to file a Report of Guardian describing the physical condition, including level of disability or

functional incapacity, principal residence, treatment, care and activities of the Ward, as well as providing a description of those actions the Guardian has taken on behalf of the Ward. You will be required to file the reports:

- a. Within six months of your appointment as guardian;
- b. Every six months following the initial report;
- c. Within thirty days of your removal or resignation from, or the termination of, the guardianship; and/or
- d. At other times as the court may order.

If you do not file a report, the Judge will enter an order for you to show cause why you, the guardian, should not be held in contempt. The Judge could also terminate (cancel) your guardianship if you do not file your report.

Frequently Asked Questions

1. What is “Service” in a Guardianship?

When you are involved in a court case, you are responsible for delivery (service) of copies of important papers you file with the court to other people involved in the case (like the Proposed Ward, spouse, parents, and adult children of the proposed ward, for example). Depending on the circumstances, the papers must be served by personal delivery (called personal service), or if the person agrees, they can waive personal delivery with a notarized statement. In limited circumstances, you may be allowed to serve by publishing a notice in a newspaper or by registered mail. Service lets these persons know that you are asking the court to appoint a guardian for the adult named in the Petition; the person you want the court to appoint as guardian; and the date and time when they must respond to your request.

2. How to Serve the Proposed Ward.

The Proposed Ward will most likely need to be served by personal service by a Sheriff or private process server, unless the Proposed Ward is filing a voluntary petition for himself or herself. The Proposed Ward of an involuntary petition (a petition filed by someone other than the Proposed Ward) cannot sign an acceptance of service, but must be served by the Sheriff or private process server. This is because you are telling the Court that the Proposed Ward is incompetent. Follow the steps below for Option 1 – Service by Sheriff.

3. How to Serve the Other Persons Entitled to Notice. Choose **ONLY ONE** of the following options to serve each person:

Option 1– Service by Sheriff

Summons. It is recommended to have a Sheriff in the county where the person can be found serve him or her with the papers. There will be a separate **service fee** (usually fifty (\$50.00) dollars in Wyoming). You can contact the Sheriff’s department in the county where the person lives to determine the fee charged by the Sheriff. This is also true if the person is going to be served in a different state. You will need to provide the Sheriff with a file-stamped copy of the *Summons* and *Petition* to be served on the person.

Proof of Service. The Sheriff’s office will complete the last page of the *Summons* called the “*Return*” (or they may have their own form - an “*Affidavit of Service*”) and will usually file the original with the Clerk’s office and send you a copy. If you receive what looks like the original “*Return*” or “*Affidavit of Service*” from the Sheriff, call the Clerk’s office to make sure the original has been filed. If it has not, then file the original with the Clerk’s office and keep a copy for yourself. This is the proof that the person was given proper notice.

Note: Once the person has been served, you MUST file the original *Summons* and the original *Return* (or *Affidavit of Service*) with the Clerk’s office so that the Judge knows that proper service was made.

Option 2 – Acknowledgement and Acceptance of Service.

If the person required to receive service agrees, he or she may sign a form stating that a copy of the *Summons* and *Petition* were received. If the person agrees to accept service, you will need to fill out an *Acknowledgement and Acceptance of Service* form. The person required to be served must sign this document in front of a Notarial Officer (Notary or Court Clerk). **The Proposed Ward of an involuntary petition cannot use the *Acknowledgement and Acceptance of Service*, and must be served using Option 1.**

Proof of Service. Once the *Acknowledgement and Acceptance of Service* form is signed, take the original and two (2) copies of the signed form to the Clerk’s office for filing. You should keep one copy for your records and provide the other copy to the person signed the *Acknowledgement and Acceptance of Service*.

Note: You must file the signed *Acknowledgement and Acceptance of Service* form and the original *Summons* with the Clerk’s office so that the Judge knows that proper service on the person was made.

Option 3 –Service by publication if you cannot find a person who is entitled to notice.

If you were unable to serve a person required to receive notice either by the Sheriff or by obtaining an *Acknowledgement or Acceptance of Service*, then you may make a request to serve that person by Publication.

There are additional fees for service by publication and it will take more time. If you are unsure whether or not you are allowed to serve a person by publication, you should consult with a lawyer. However, if you can demonstrate that you have made every effort to find the respondent's address, completely fill out an *Affidavit to Allow Service by Publication* and *Notice of Publication*.

After the Clerk signs and files the *Notice of Publication*, it is your responsibility to contact the appropriate newspaper and to arrange for the publication and pay the appropriate fees. An appropriate newspaper is one that has been regularly issued at least once each week for a period of fifty-two (52) consecutive weeks prior to the date of the first publication of notice or advertisements. It must have a paid circulation of at least five hundred (500) and each page must not be less than ten (10) inches by twelve and one-half inches in size. The newspaper must publish the notice once a week for four (4) consecutive weeks.

Proof of Service. The other party will have thirty (30) days after the **last** date of publication to file a written response to your petition. After the thirty (30)-day waiting period, fill out, sign and notarize the *Affidavit Following Service by Publication*. You must also attach the *Affidavit of Publisher*, which is a form the newspaper will prepare and send to you after it completes the publishing.

Note: You must file the *Affidavit Following Service by Publication* and the *Affidavit of Publisher* with the Court, so that the Judge knows that proper service on the person was made.

4. Who can serve?

Ask a private process server, or a representative of the county sheriff's civil division, to personally serve copies of the forms to the persons named above. The forms cannot be sent by mail. You will have to pay this person for his or her services. The Clerk of Court in the county where you need to make service may have a list of local process servers.

5. What if I cannot locate a person that is required to receive service or he or she is avoiding service of process?

You will have to publish notice of the hearing in the newspaper in the county where you have filed the petition. See information above for forms and instructions on service by publication.

6. What if an interested person, such as the Proposed Ward's spouse, parent or child, does not agree with me being the guardian?

If someone contests the appointment of a guardian, then the court will most likely schedule a court hearing, where you will present your evidence as to why the guardianship is needed and why you should be appointed the guardian. At the hearing, the person contesting the guardianship will be given a chance to show the judge why the guardianship should not be granted. If someone contests the guardianship, you should consult with an attorney if at all possible.

7. What if I am granted guardianship, and then the ward gets better or no longer needs a guardian?

The Ward, or other interested person, may file a Petition to Terminate the guardianship. This would have to be filed with the Court asking the court to set aside the guardianship. If there is a Petition to Terminate the guardianship and you believe the guardianship is still needed, you will need to file a response and the court will set a hearing on the matter. Be sure that the court always has your current address and phone numbers at all times, and read all mail you may get from the court, and follow any instructions carefully and on time.