

# LET'S TALK ABOUT **ADULT GUARDIANSHIP**

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THE PROCESS AND HOW IT EFFECTS YOU



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## **Guardianship of an Adult**

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## **Introduction**

A guardianship is a legal relationship where a person (the guardian) is given the legal right to care for another person (the ward) and/or the ward's property.

There are three possible relationships:

1. Guardianship of the person
2. Guardianship of the estate
3. Guardianship of the person and the estate

## **When Is a Guardian Needed?**

The need for a guardian arises when a person is incapacitated to the extent that he/she is not capable of making decisions about their care and/or managing their assets. Incapacity is a result of the person's medical condition, adaptive behavior and intellectual functioning. It can also be needed if the person is a minor. A court proceeding is required before a guardian can be appointed. We will talk more about this later.

The Arkansas Code Section for the statutory authority for guardianship is Arkansas Code Annotated §28-65-201-221. The assistance of an attorney is required to complete this process under normal circumstances. The statutory provision for guardianship requires the loss of voting privileges unless the

## **Who Can Be Appointed as Guardian**

A guardian of the person may be appointed for any incapacitated person (except a married minor) who is incapacitated solely by reason of his or her minority.

A person is qualified to be a guardian if the person is a resident of this state, 18 years of age or older, of sound mind, and not a convicted and unpardoned felon.

A parent under 18 years of age is qualified for appointment as guardian of the person of his or her child.

A non-resident natural person may be appointed as guardian if the person meets all of the other requirements and if the person appoints a resident in AR to accept service of process.

However, unless nominated by will, bond may not be dispensed with.

A single petition for guardianship is permitted if the guardianship is sought for two or more persons who are children of a common parent.

Before appointing a guardian, the court must be satisfied that:

- The person for whom a guardian is prayed is either a minor or otherwise incapacitated;
- A guardianship is desirable to protect the interests of the incapacitated person; and
- The person to be appointed is qualified and suitable to act as such.

## **What is the Process for Appointing a Guardian?**

The first and foremost is getting the case in front of the Court to make that decision. This process can seem hard, but that is what we are here for.

### **Petition for Guardianship**

The petition shall state, insofar as can be ascertained:

The name, age, residence, and post office address of the incapacitated person.

The nature of incapacity and purpose of the guardianship.

The approximate value and a description of the incapacitated person's property, including any compensation, pension, insurance, or allowance to which he is she may be entitled.

Whether there is, in any state, a guardian of the person or of the estate of the incompetent.

The residence and post office address of the person whom petitioner asks to be appointed guardian.

The names and addresses, so far as known or can be reasonably ascertained, of the persons most closely related to the incapacitated person by blood or marriage.

The names and addresses of wards for whom any natural person whose appointment is sought is already guardian.

The reasons why the appointment of a guardian is sought and the interest of the petitioner in the appointment.

A statement of the respondent's alleged disability.

A recommendation proposing the type, scope, and duration of the guardianship.

A statement that any facility or agency from which the respondent is receiving services has been notified of the proceedings; and

The names and addresses of others having knowledge about the person's disability.

### **Notice of Hearing**

Notice of hearing need not be given to any person who has signed the petition, who has in writing waived notice of the hearing (except for the alleged incapacitated person), or any person who actually appears at the hearing.

Notice of Hearing must be served upon the incapacitated person if over 14 years of age. The notice must contain a statement of the alleged incapacitated person's rights.

Notice must also be provided to all interested parties per the statute.

One reason to plan is to name the people you would want to make your personal decisions. That is, who will make financial, legal, personal, and healthcare decisions for you if you can't.

If you don't name somebody, then the State Government has a process in place to name somebody to make those decisions for you. Their plan lets a Judge make the choice and control their plan.

### **Guardianship Order**

A court order establishing guardianship shall contain findings of fact that the respondent is an incapacitated person and is in need of a guardian for the person or estate, or both. The order may limit the power and duties of the guardian.

Not more than one person shall be appointed as guardian of the person unless the guardians are husband and wife.

The order shall specify the nature of the guardianship and the amount of the bond to be given.

In cases involving minor children, the order may make provisions for visitation and child support as in other cases involving child custody.

If the guardianship is to be of the person only, the amount of the bond shall not exceed \$1000, or the court may dispense with the bond.

When a guardian has given bond (or if bond is waived) and filed his written acceptance of his appointment, letters of guardianship under the seal of the court shall be issued to him. The letters, when so issued, until revoked or cancelled by the court, shall protect the persons who, in good faith, act in reliance thereon.

## **Duties of Guardian**

It shall be the duty of the guardian of the person, consistent with and out of the resources of the ward's estate, to care for and maintain the ward and, if he is a minor, to see that he is protected, properly trained and educated and that he has the opportunity to learn a trade, occupation or profession.

The guardian may be required to report the condition of his ward to the court at regular intervals or otherwise, as the court may direct.

No guardian appointed after October 1, 2001, shall make any of the following decisions without filing a petition and receiving express court approval:

- Consent on behalf of the incapacitated person to abortion, sterilization, psychosurgery, or removal of bodily organs except when necessary in a situation threatening the life of the incapacitated person
- Consent to withholding life-saving treatment;
- Authorize experimental medical procedures;

## **Termination of Guardianship**

A guardianship automatically terminates upon death of the ward or upon marriage of the ward if the guardianship was solely because of the ward's minority.

A guardianship may be terminated by court order after such notice as the court may require if the guardianship was solely because of the ward's minority however, if the court finds upon a proper showing by substantial competent evidence that it is in the best interest of the ward that the guardianship be continued after the ward reaches majority, the court may order the guardianship to continue until such time as it may be terminated by order of the court.

A guardianship may be terminated if the ward becomes a nonresident of this state.

A guardianship may be terminated if, for any other reason, the guardianship is no longer necessary or for the best interest of the ward.