

GUARDIANSHIP OF A DISABLED ADULT

YOU MUST FILL OUT ALL OF THE FORMS PROVIDED IN THIS PACKET. STATE STATUTE IS PROVIDED AS TO WHY SOME OF THE FORMS ARE NEEDED.

THESE NEED TO HAVE A SPECIFIC HEARING DATE DUE TO THE FACT THAT SUMMONS AND NOTICE MUST BE SERVED UPON THE DISABLED ADULT. COURT DATE & TIME WILL BE GIVEN BY PROBATE JUDGE'S CLERK.

COST: ASSETS UNDER \$15,000	\$113.00
ASSETS OVER \$15,000	\$148.00

THIS DOES NOT INCLUDE COST OF "LETTERS OF OFFICE". THESE ARE \$2.00 EACH AND CAN BE PURCHASED AT TIME OF FILING CASE OR AT ANY TIME LATER (AS LONG AS CASE IS OPEN).

FORMS: (must provide at least 3 copies)

PETITION FOR GUARDIANSHIP OF DISABLED ADULT (MUST LIST REASON FOR GUARDIANSHIP AND **ALL** CLOSEST LIVING RELATIVES WITH ADDRESSES)

PHYSICIAN'S AFFIDAVIT

SUMMONS FOR DISABLED ADULT: CIRCUIT CLERK WILL ISSUE (MUST BE PROPERLY SERVED TO DISABLED ADULT)

NOTICE OF HEARING (WITH ALL RELATIVES LISTED ON PETITION - SHOULD BE SENT OUT WITH COPY OF PETITION ATTACHED)

CERTIFICATE OR PROOF OF SERVICE (THAT ABOVE DOCUMENTS GOT MAILED OUT)

OATH AND BOND

ORDER FOR GUARDIAN AD LITEM (IF NEEDED)

ORDER APPOINTING GUARDIAN OF DISABLED ADULT

ONCE GRANTED A COURT DATE WILL BE SET FOR ONE YEAR OUT – AT THAT TIME YOU WILL NEED TO PROVIDE TO THE COURT AN ANNUAL REPORT. IF COURT APPROVES REPORT ANOTHER DATE WILL BE SET AGAIN ONE YEAR OUT AND EACH YEAR THE PROCESS IS THE SAME.

Formerly Ill.Rev.Stat.1991, ch. 110½, ¶ 11a-9.

For effective date and application of P.A. 84-555, see note following 755 ILCS 5/6-2.

For effective date and application of P.A. 84-690, see note following 755 ILCS 5/6-2.

5/11a-10. Procedures preliminary to hearing

§ 11a-10. Procedures preliminary to hearing.

(a) Upon the filing of a petition pursuant to Section 11a-8, the court shall set a date and place for hearing to take place within 30 days. The court shall appoint a guardian ad litem to report to the court concerning the respondent's best interests consistent with the provisions of this Section, except that the appointment of a guardian ad litem shall not be required when the court determines that such appointment is not necessary for the protection of the respondent or a reasonably informed decision on the petition. If the guardian ad litem is not a licensed attorney, he or she shall be qualified, by training or experience, to work with or advocate for the developmentally disabled, mentally ill, physically disabled, the elderly, or persons disabled because of mental deterioration, depending on the type of disability that is alleged in the petition. The court may allow the guardian ad litem reasonable compensation. The guardian ad litem may consult with a person who by training or experience is qualified to work with persons with a developmental disability, persons with mental illness, or physically disabled persons, or persons disabled because of mental deterioration, depending on the type of disability that is alleged. The guardian ad litem shall personally observe the respondent prior to the hearing and shall inform him orally and in writing of the contents of the petition and of his rights under Section 11a-11. The guardian ad litem shall also attempt to elicit the respondent's position concerning the adjudication of disability, the proposed guardian, a proposed change in residential placement, changes in care that might result from the guardianship, and other areas of inquiry deemed appropriate by the court. At or before the hearing, the guardian ad litem shall file a written report detailing his or her observations of the respondent, the responses of the respondent to any of the inquiries detailed in this Section, the opinion of the guardian ad litem or other professionals with whom the guardian ad litem consulted concerning the appropriateness of guardianship, and any other material issue discovered by the guardian ad litem. The guardian ad litem shall appear at the hearing and testify as to any issues presented in his or her report.

(b) The court (1) may appoint counsel for the respondent, if the court finds that the interests of the respondent will be best served by the appointment, and (2) shall appoint counsel upon respondent's request or if the respondent takes a position adverse to that of the guardian ad litem. The respondent shall be permitted to obtain the appointment of counsel either at the hearing or by any written or oral request communicated to the court prior to the hearing. The summons shall inform the respondent of this right to obtain appointed counsel. The court may allow counsel for the respondent reasonable compensation.

(c) If the respondent is unable to pay the fee of the guardian ad litem or appointed counsel, or both, the court may enter an order for the petitioner to pay all such fees or such amounts as the respondent or the respondent's estate may be unable to pay. However, in cases where the Office of State Guardian is the petitioner, consistent with Section 30 of the Guardianship and Advocacy Act,¹ or where an elder abuse provider agency is the petitioner, pursuant to Section 9 of the Elder Abuse and Neglect Act,² no guardian ad litem or

legal fees shall be assessed against the Office of State Guardian or the elder abuse provider agency.

(d) The hearing may be held at such convenient place as the court directs, including at a facility in which the respondent resides.

(e) Unless he is the petitioner, the respondent shall be personally served with a copy of the petition and a summons not less than 14 days before the hearing. The summons shall be printed in large, bold type and shall include the following notice:

NOTICE OF RIGHTS OF RESPONDENT

You have been named as a respondent in a guardianship petition asking that you be declared a disabled person. If the court grants the petition, a guardian will be appointed for you. A copy of the guardianship petition is attached for your convenience.

The date and time of the hearing are:

The place where the hearing will occur is:

The Judge's name and phone number is:

If a guardian is appointed for you, the guardian may be given the right to make all important personal decisions for you, such as where you may live, what medical treatment you may receive, what places you may visit, and who may visit you. A guardian may also be given the right to control and manage your money and other property, including your home, if you own one. You may lose the right to make these decisions for yourself.

You have the following legal rights:

- (1) You have the right to be present at the court hearing.
- (2) You have the right to be represented by a lawyer, either one that you retain, or one appointed by the Judge.
- (3) You have the right to ask for a jury of six persons to hear your case.
- (4) You have the right to present evidence to the court and to confront and cross-examine witnesses.
- (5) You have the right to ask the Judge to appoint an independent expert to examine you and give an opinion about your need for a guardian.
- (6) You have the right to ask that the court hearing be closed to the public.
- (7) You have the right to tell the court whom you prefer to have for your guardian.

You do not have to attend the court hearing if you do not want to be there. If you do not attend, the Judge may appoint a guardian if the Judge finds that a guardian would be of benefit to you. The hearing will not be postponed or canceled if you do not attend.

IT IS VERY IMPORTANT THAT YOU ATTEND THE HEARING IF YOU DO NOT WANT A GUARDIAN OR IF YOU WANT SOMEONE OTHER THAN THE PERSON NAMED IN THE GUARDIANSHIP PETITION TO BE YOUR GUARDIAN. IF YOU DO NOT WANT A GUARDIAN OR IF YOU HAVE ANY OTHER PROBLEMS, YOU SHOULD CONTACT AN ATTORNEY OR COME TO COURT AND TELL THE JUDGE.

Service of summons and the petition may be made by a private person 18 years of age or over who is not a party to the action.

(f) Notice of the time and place of the hearing shall be given by the petitioner by mail or in person to those persons, including the proposed guardian, whose names and addresses

the designation. The selection of the guardian shall be in the discretion of the court whether or not a designation is made. P.A. 79-328, § 11a-6, added by P.A. 80-1415, § 1, eff. Jan. 1, 1979. Amended by P.A. 81-795, § 1, eff. Sept. 16, 1979. Formerly Ill.Rev.Stat.1991, ch. 110½, ¶ 11a-6.

5/11a-7. Venue

§ 11a-7. Venue. If the alleged ward is a resident of this State, the proceeding shall be instituted in the court of the county in which he resides. If the alleged ward is not a resident of this State, the proceeding shall be instituted in the court of a county in which his real or personal estate is located.

P.A. 79-328, § 11a-7, added by P.A. 80-1415, § 1, eff. Jan. 1, 1979.

Formerly Ill.Rev.Stat.1991, ch. 110½, ¶ 11a-7.

5/11a-8. Petition

§ 11a-8. Petition. The petition for adjudication of disability and for the appointment of a guardian of the estate or the person or both of an alleged disabled person must state, if known or reasonably ascertainable: (a) the relationship and interest of the petitioner to the respondent; (b) the name, date of birth, and place of residence of the respondent; (c) the reasons for the guardianship; (d) the name and post office address of the respondent's guardian, if any, or of the respondent's agent or agents appointed under the Illinois Power of Attorney Act,¹ if any; (e) the name and post office addresses of the nearest relatives of the respondent in the following order: (1) the spouse and adult children, parents and adult brothers and sisters, if any; if none, (2) nearest adult kindred known to the petitioner; (f) the name and address of the person with whom or the facility in which the respondent is residing; (g) the approximate value of the personal and real estate; (h) the amount of the anticipated annual gross income and other receipts; (i) the name, post office address and in case of an individual, the age, relationship to the respondent and occupation of the proposed guardian. In addition, if the petition seeks the appointment of a previously appointed standby guardian as guardian of the disabled person, the petition must also state: (j) the facts concerning the standby guardian's previous appointment and (k) the date of death of the disabled person's guardian or the facts concerning the consent of the disabled person's guardian to the appointment of the standby guardian as guardian, or the willingness and ability of the disabled person's guardian to make and carry out day-to-day care decisions concerning the disabled person. A petition for adjudication of disability and the appointment of a guardian of the estate or the person or both of an alleged disabled person may not be dismissed or withdrawn without leave of the court.

P.A. 79-328, § 11a-8, added by P.A. 80-1415, § 1, eff. Jan. 1, 1979. Amended by P.A. 81-795, § 1, eff. Sept. 16, 1979; P.A. 89-396, § 15, eff. Aug. 20, 1995; P.A. 90-796, § 5, eff. Dec. 15, 1998.

Formerly Ill.Rev.Stat.1991, ch. 110½, ¶ 11a-8.

¹ 755 ILCS 45/1-1 et seq.

5/11a-8.1. Petition for standby guardian of disabled person

§ 11a-8.1. Petition for standby guardian of disabled person. The petition for appointment of a standby guardian of the person or the estate, or both, of a disabled person must state, if known: (a) the name, date of birth, and residence of the disabled person; (b) the names and post office addresses

of the nearest relatives of the disabled person in the following order: (1) the spouse and adult children, parents and adult brothers and sisters, if any; if none, (2) nearest adult kindred known to the petitioner; (c) the name and post office address of the person having guardianship of the disabled person, and of any person or persons acting as agents of the disabled person under the Illinois Power of Attorney Act;¹ (d) the name, post office address, and, in case of any individual, the age and occupation of the proposed standby guardian; (e) the preference of the disabled person as to the choice of standby guardian; (f) the facts concerning the consent of the disabled person's guardian to the appointment of the standby guardian, or the willingness and ability of the disabled person's guardian to make and carry out day-to-day care decisions concerning the disabled person; (g) the facts concerning the execution or admission to probate of the written designation of the standby guardian, if any, a copy of which shall be attached to or filed with the petition; (h) the facts concerning any guardianship court actions pending concerning the disabled person; and (i) the facts concerning the willingness of the proposed standby guardian to serve, and in the case of the Office of State Guardian and any public guardian, evidence of a written acceptance to serve signed by the State Guardian or public guardian or an authorized representative of the State Guardian or public guardian, consistent with subsection (b) of Section 11a-3.1.

P.A. 79-328, § 11a-8.1, added by P.A. 90-796, § 5, eff. Dec. 15, 1998.

¹ 755 ILCS 45/1-1 et seq.

5/11a-9. Report

§ 11a-9. Report.

(a) The petition for adjudication of disability and for appointment of a guardian should be accompanied by a report which contains (1) a description of the nature and type of the respondent's disability and an assessment of how the disability impacts on the ability of the respondent to make decisions or to function independently; (2) an analysis and results of evaluations of the respondent's mental and physical condition and, where appropriate, educational condition, adaptive behavior and social skills, which have been performed within 3 months of the date of the filing of the petition; (3) an opinion as to whether guardianship is needed, the type and scope of the guardianship needed, and the reasons therefor; (4) a recommendation as to the most suitable living arrangement and, where appropriate, treatment or habilitation plan for the respondent and the reasons therefor; (5) the signatures of all persons who performed the evaluations upon which the report is based, one of whom shall be a licensed physician and a statement of the certification, license, or other credentials that qualify the evaluators who prepared the report.

(b) If for any reason no report accompanies the petition, the court shall order appropriate evaluations to be performed by a qualified person or persons and a report prepared and filed with the court at least 10 days prior to the hearing.

(c) Unless the court otherwise directs, any report prepared pursuant to this Section shall not be made part of the public record of the proceedings but shall be available to the court or an appellate court in which the proceedings are subject to review, to the respondent, the petitioner, the guardian, and their attorneys, to the respondent's guardian ad litem, and to such other persons as the court may direct. P.A. 79-328, § 11a-9, added by P.A. 80-1415, § 1, eff. Jan. 1, 1979. Amended by P.A. 81-795, § 1, eff. Sept. 16, 1979; P.A. 84-555, § 1, eff. Sept. 18, 1985; P.A. 84-690, § 1, eff. Sept. 20, 1985; P.A. 89-396, § 15, eff. Aug. 20, 1995.