

Adult Guardianship

CENTER FOR DISABILITY & ELDER LAW

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Please note: this information is for training purposes only and nothing contained herein should be construed as legal advice for any individual legal matter.

Anyone having questions regarding any individual legal matter should seek a referral to a private attorney through the Chicago bar association or contact a local legal hotline or legal aid website, such as Illinois legal aid online.

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What is Adult Guardianship?

A legal relationship between a guardian, who is appointed by the court, and a person with a disability

Guardianship is needed when a person is unable to make and communicate responsible decisions regarding his personal care or finances due to a mental, physical or developmental disability

The question is not whether the person is making good or bad decisions. The question is whether the person has the ability to make decisions - whether that person understands the decision before them, the options, the consequences of that decision, and whether they can communicate those decisions

Alternatives to Guardianship

Power of Attorney

- Health Care
- Property
 - Principal needs capacity

Supported Decision Making

Definition of Disability

Person 18 years or older who because of:

- Mental deterioration or physical incapacity
- Mental illness or developmental disability
 - Developmental disability includes an intellectual disability, cerebral palsy, epilepsy or autism
- Fetal alcohol syndrome or effects of fetal alcohol syndrome
- Gambling, idleness, debauchery, excessive spending or drug use

Is unable to make and communicate decisions

Must be **NEXUS** - between the disability and the inability to care for themselves

Reasons for Adult Guardianship

- Reasons for guardianship:
 - To promote the well-being of the person with a disability
 - To protect them from neglect, exploitation or abuse
 - To encourage the development of maximum self-reliance and independence

Guardianship is an **extreme** measure that terminates a person's civil rights and ability to make decisions about their lives so it should be a measure of last resort



A respondent has the following rights in the adjudication process:

To be present at the hearing	For representation by an Attorney <ul style="list-style-type: none">• Court will appoint a pro bono attorney if necessary	Trial by a jury of six persons, although jury trials are quite rare	An independent medical evaluation	To present evidence and confront and cross-examine witnesses
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Due Process
Rights of
Respondent

What types of guardianship are there?

Guardianship of the Person

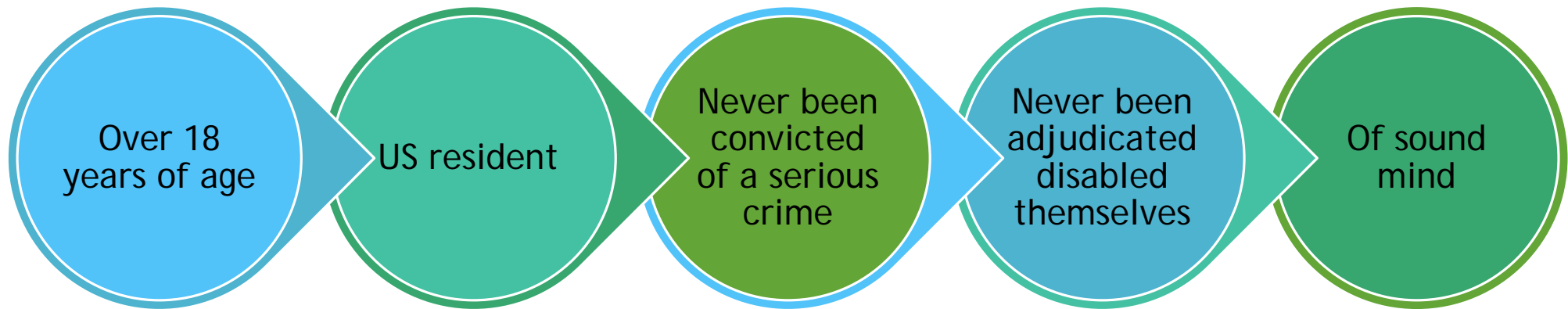
Guardianship of the Estate

Plenary (Full) Guardianship

Limited Guardianship

Temporary/Emergency Guardianship

Who is Qualified to Serve as a Guardian?



Should Respondent Appear?

Yes, we encourage petitioners to have respondents appear unless it will harm the Respondent

Judge can speak to respondent directly

- Doesn't matter if won't understand or be able to answer questions

Guardian *ad litem* (GAL)

GAL

- Court appointed attorney
- Acts as court's "eyes and ears"

General Rule: not required if Respondent appears in court and the judge can speak to them directly

Petitioner is responsible for GAL fee if Respondent does not appear, though a pro bono GAL possible (if have fee waiver)

GAL

The GAL meets with the Respondent to determine the Respondent's position with respect to:

- Being adjudicated disabled
- The proposed guardian
- Any changes in residential placement or care

The GAL files a written report and appears and testifies concerning the appropriateness of guardianship

Duties of the Guardian

Guardian of the Person

- The guardian makes all necessary decisions for the Ward including:
 - Support, care, comfort, health, education, maintenance
 - Living arrangement
- Substituted judgment
 - Conform to what the ADP would have done if known
 - If unknown, then best interests
- Goal is maximum self-reliance and independence

Duties of the Guardian

Annual Report on Ward

- Mail report to court every year
- Mental, physical, and social health
- Present living arrangement
- Summary of professional and educational services

The judge generally gives you copies at the end of the hearing

Venue

Must file in the county where RESPONDENT resides

Daley Center (50 West Washington) is only court that hears Cook County guardianship cases (for now)

Report of Physician

Establishes the need for guardianship

Must use the court's form (CCP-211)

Must be completed and signed by a licensed doctor

Exam must be within **three months** of filing and date must be clear on the form

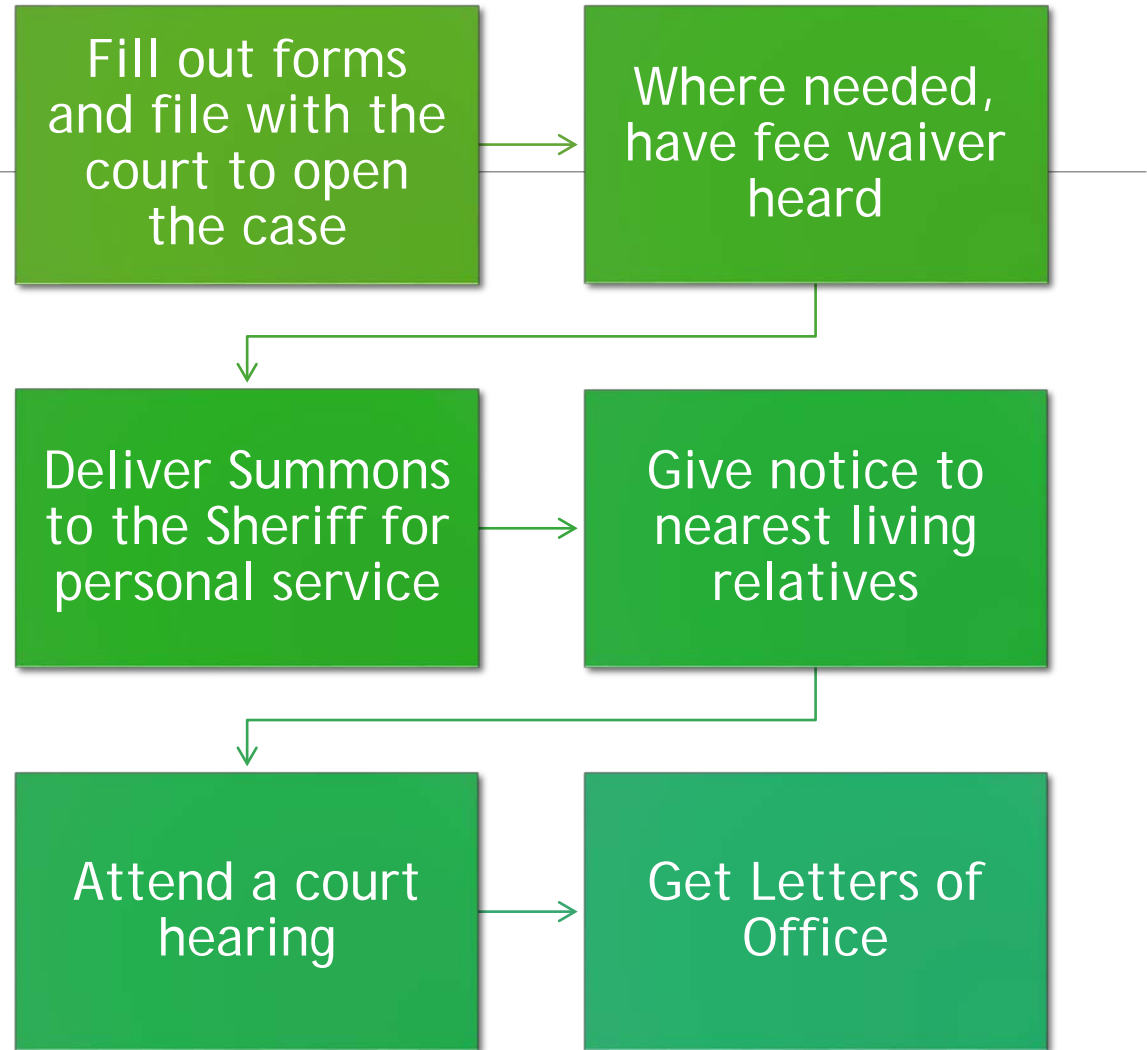
For plenary guardianship must state that ADP is **"totally incapable of making personal and financial decisions"**

Guardianship and Mental Illness

Guardian cannot
involuntary commit or
force medications

Other concerns

What is the Guardianship Process in Cook County?



Terminology

Petitioner



Guardian

Respondent



Ward

Guardianship Packet

The Circuit Court clerk's office provides guardianship packets that contain:

1. Cover Sheet
2. Petition (with Exhibit A)
3. Order Appointing Plenary Guardian of the Person
4. Order Appointing GAL
5. Oath and Bond - No Surety
6. Oath and Bond of Representative - Surety (do not use)
7. Summons
8. Statement of Right
9. Report of Physician
10. Notice of Motion (NOM) - **NOT** in packet but needed

Petition

Five Pages

- First two pages are general information
- Next three pages are called Exhibit A and are for determining who should get served a copy of the petition

Summons: Personal Service of Respondent

Sheriff must **personally** serve the respondent with a copy of the petition and summons for the court to be able to hear the case

- More than 14 days before the hearing
- Sheriff cannot serve a minor
 - Don't file more than two weeks before 18th birthday
- All respondents must be served despite the nature of their disability
- A notice of the Respondent's due process rights is included in the Summons

Service of Interested Persons

- Petitioner must give notice to nearest living relatives
 - Exhibit A of the Petition
 - *Both* Parents, Adult Siblings
- Mail or hand deliver a copy of the petition and Notice of Motion (that gives information about court hearing) to each person in Exhibit A more than 14 days before the hearing

Fees and Fee Waiver

Filing fee is \$390

Can ask the court to waive the fee based on household income and expenses

- Rule is that fees will be waived if you have any means-based public assistance (such as food stamps, SSI)
- Partial waivers are possible
- Look at income and assets and their relationship to the federal poverty level

All waivers are heard in a courtroom on the 18th floor of the Daley Center

Fees and Fee Waiver - Process

Must open case (present documents, including the application for a fee waiver, and pay fee)

Case is assigned a case number

It is necessary to have the case number before a fee waiver is heard

If granted - then filing fee and Sheriff's fee are waived

If denied - will be given a certain amount of time to pay the fee

E-filing or Paper-filing

Electronic filing (e-filing) is mandatory

- Possible to be exempt from e-filing where the petitioner:
 - Does not have a computer or internet
 - Has a disability or low literacy
 - Has limited English proficiency

Needed for Court Hearing

- Oath and Bond -No Surety
 - Each petitioner must have *notarized* Oath and Bond
 - Your oath that you will faithfully discharge your duties
- Order Appointing Plenary Guardian of the Person
- Statement of Right
 - Notice informing ward of right to seek termination, revocation or modification of the guardianship
- Proof of Service - NOM

Court Hearing

Judge will decide:

- Does the respondent have a disability that impairs their ability to make and communicate decisions?
 - Will rely on Physician's Report and read it into the record
- Who should be the guardian?
 - Does respondent object to the petitioner?

Letters of Office

- Official proof of guardianship

Next Steps

Screening Form

- For full representation

Daley Center Help Desk

- 9 am to 1 pm every day court is open

Sign up for a workshop

Questions?

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