

GUARDIANSHIP CHECKLIST

STATUTORY AUTHORITY

ACA 28-65-201 through 221.

Guardianship is a permanency option for juveniles in the custody of DHHS. 9-27-338(b)(1)(B).

If a juvenile is the subject matter of an open case filed under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the guardianship petition shall be filed in that case. 28-65-107(c).

It shall be the duty of every person granted custody, guardianship, or adoption of any juvenile in a proceeding pursuant to or arising out of a dependency-neglect action under this subchapter to ensure that the juvenile is not returned to the care or supervision of any person from whom the child was removed or any person the court has specifically ordered not to have care, supervision or custody of the juvenile. This section shall not be construed to prohibit those placements if the person who has been granted custody, guardianship, or adoption obtains a court order to that effect from the juvenile court that made the award of custody, guardianship or adoption. ACA 9-27-353.

Appointment of 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.

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.

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- 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 of hearing shall also be provided to:
 - Parents of the alleged incapacitated person when the person is a minor
 - Spouse of the alleged incapacitated person
 - Any person who is guardian of the person or estate of the alleged incapacitated person
 - Any person who has the care and custody of the alleged incapacitated person
 - The Director of any agency from which the respondent is receiving services
 - DHHS when the petition seeks appointment of a guardian who, at the time the petition is filed, serves as guardian of 5 or more minor wards
 - If no parent or spouse, then at least one of the nearest competent relatives by blood or marriage of the alleged incapacitated person
 - If directed by the court, any agency of the US or state which makes or awards compensation, pension, insurance, or other allowance for the benefit of the ward or his or her estate
 - If directed by the court, any agency of the US or state or any charitable organization which may be charged with the supervision, control or custody of the incompetent person
 - Any other person directed by the court

- If the incapacitated person is over 14 years of age, there shall be personal service upon him if personal service can be had.
- Service on others may be held in any manner provided by ACA 28-2-112(b) or (e).
- The court, for good cause shown, may reduce the number of days of notice, but in every case at least 20 days notice shall be given.

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.

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Standby Guardian

Without surrendering parental rights, any parent who is chronically ill or near death may have a standby guardian appointed by the court for the parent's minor children using the same procedures outlined in the statute to establish a guardianship. The standby guardian's authority would take effect as outlined in an order of standby guardianship upon

- The death of the parent
- The mental incapacity of the parent; or
- The physical debilitation and consent of the parent.

The standby guardian shall immediately notify the court upon the death, incapacity, or debilitation of the parent and shall immediately assume the role of guardian of the minor children. The court shall enter an order of guardianship in conformance with this section.

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;

- Authorize termination of parental rights;
- Prohibit the person from obtaining a driver's license
- Consent to any settlement or compromise of any claim by or against the incapacitated person or his estate
- All guardians shall file an annual report with the court. The report shall contain:
 - The person's current medical, physical and social conditions,
 - His present living arrangement,
 - The need for continued guardianship services,
 - An accounting of his estate (if the guardianship is also of the estate), and
 - Any other information requested by the court or necessary in the opinion of the guardian.

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.