

Guardianships: From Start to Finish

Presented by:

Judge Rebecca S. Foley
Nargis A. Khokhar
Robert W. Porter

1

The Illinois Probate Act

- The *Illinois Probate Act* details the process for the appointment of a Guardian as well as the duties, powers, and responsibilities of a Guardian.
- 755 ILCS 5/11a-1, *et seq.* governs Guardianships for Disabled Adults.
- 755 ILCS 5/11-1, *et seq.* governs Guardianships for Minors.
- This presentation will concern Guardianships for Disabled Adults.



2

Guardianship Versus Power of Attorney: “What’s the difference?”



- A legal proceeding that concludes with a Court adjudicating an individual as a disabled adult.
- Only modified or rescinded by Court order.
- The Guardian begins to act upon appointment.
- The Guardian ultimately has to answer to both the Ward and the Court.

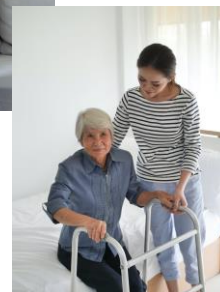


- A voluntary act undertaken by a person with decisional capacity.
- Can be modified or rescinded by a person at any point so long as he or she has decisional capacity.
- The Agent begins to act at some future point.
- The Agent ultimately has to answer to the maker of the Power of Attorney (and sometimes the Court).

3

When is Guardianship Appropriate?

- An individual has diminished capacity and no Power of Attorney.
- An individual has diminished capacity and is not allowing his or her Power of Attorney Agent to act.
- An individual is in a state of crisis and no Power of Attorney.
- An individual is being abused or exploited.



4

Disability Defined

- 755 ILCS 5/11a-2
 - Mental Deterioration
 - Physical Incapacity
 - Developmental Disability
 - Mental Illness
 - Gambling, Idleness, Debauchery, Excessive Use of Intoxicants or Drugs
 - Must be of such extent to cause significant self-harm.



5

Starting the Process: The Petition

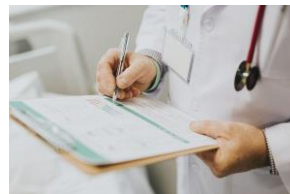
- 755 ILCS 5/11a-8
- The Petition must contain:
 - Biographical information about Respondent.
 - Explanation of why Guardianship is needed.
 - Names, addresses, and dates of birth for Respondent's nearest next-of-kin.
 - The value of the Respondent's personal and real property.
 - The value of the Respondent's annual income.
 - Type of Guardianship needed.
 - Nomination of a Guardian.



6

Starting the Process: The Petition (Part II)

- The Petition *should* be accompanied by a Statutory Physician's Report.
 - 755 ILCS 5/11a-9.
- The Petitioner needs to nominate a GAL.
- Seeking Temporary Relief.
 - 755 ILCS 5/11a-4.
 - Can be done ex parte in emergencies.
- The Petition can ask for residential placement authority.
 - 755 ILCS 5/11a-14.1.



7

The GAL Investigation

1. Role
2. Preliminary tasks
3. Interviews
4. Report to the court
5. Duties after the hearing



8

What is the Role of a Guardian ad litem? "SAFE"

- Serve as an officer of the court
- Acts in the respondent's best interest throughout the case
- Functions as the "eyes and ears" for the court
- Educates the respondent about his/ her rights



9

Preliminary Tasks

- What is being sought? Guardianship of person, estate or both?
- Were all the players invited to table?
- When did the clock start ticking?
- Read the pleadings and make sure they check out (eg. Venue, notice, timelines, medical report)
- What can anyone tell you about the Respondent prior to the first meeting that will help you build rapport and trust quickly?



10

Standard for Guardianship – 755 ILCS 5/11a-3

- Clear and convincing evidence that the person is a person with a disability
- Lacks sufficient understanding or capacity to make or communicate responsible decisions
- Unable to manage one's estate or financial affairs
- Necessary to promote well-being of the person
- Necessary to protect person from neglect, exploitation, abuse
- Encourage development of maximum self-reliance and independence
- Ordered only to the extent necessitated by individual's mental, physical and adaptive limitations



11

Standard for Guardian – 755 ILCS 5/11a-5

- A person
 - Age 18 or older
 - U.S. residency
 - Sound mind
 - Not adjudged a person with a disability
 - Not convicted of a felony (with exceptions)
- A public agency
- A corporation

12

Types of Guardians – What are the distinctions?

- Standby guardian – 755 ILCS 5/11 a-3.1
- Short-term guardian – 755 ILCS 5/11 a-3.2
- Temporary guardian – 755 ILCS 5/11 a-4
- Co-Guardian – 755 ILCS 5/11 a-5(b-5)(2)

13

Investigation – The Apparent Facts

- Meet the Respondent
- Advise Respondent of his / her rights
- Execute those rights as soon as they are asserted
- Interview others in concentric circle fashion – who knows of the day to day best? May not be a family member



14

The Investigation – The Unapparent Facts

- GAL Home Visit – may need multiple
- Visual inspection of the person and the environment
- Inventory of assets and accounts
- Who were prior POAs, financial managers, bankers, and caregivers?
- If you can't get to the truth, go back in their history



15

What are the Rights of the Respondent?

1. Present for the hearing
2. Representation
3. Jury trial
4. Present evidence and cross examine witnesses
5. Independent experts
6. Privacy
7. Preferences
8. Nuances, exceptions and refinements



16



NARGIS KHOKHAR
ATTORNEY AT LAW
308 E WASHINGTON ST. SUITE A - BLOOMINGTON, IL 61701
www.guardianlawoffice.com

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: ___/___/___ at ___ a.m. / p.m.

The place where the hearing will occur is:

___ A COURTHOUSE:

- ___ McLean County Law & Justice Center
194 W. Front St. Bloomington, IL 61791
- ___ Woodford County Courthouse
117 E. Court Street, Eureka, IL 61530
- ___ Livingston County Law & Justice Center
110 N. Main St. Pontiac, IL 61764

___ A HOSPITAL / NURSING HOME / ASSISTED LIVING FACILITY:

___ IN YOUR HOME OR RESIDENCE:

___ VIRTUALLY, ON A COMPUTER, TABLET, OR SMART PHONE. See attached instructions.

The Judge's name is: _____

The Judge's phone number is: _____

Date notice of rights given: _____



NARGIS KHOKHAR
ATTORNEY AT LAW
308 E WASHINGTON ST. SUITE A - BLOOMINGTON, IL 61701
www.guardianlawoffice.com

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 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.
- (8) You have the right to ask a judge to find that although you lack some capacity to make your own decisions, you can make other decisions, and therefore it is best for the court to appoint only a limited guardian for you.

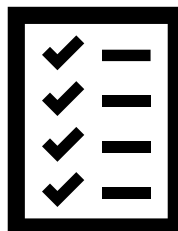
You do not have to attend the court hearing if you do not want to be there. If you do not attend, the Judge may appoint a guardian if the Judge finds that a guardian would be of benefit to you. The hearing will not be postponed or cancelled if you do not attend. If you are unable to attend the hearing in person or you will suffer harm if you attend, the Judge can decide to hold the hearing at a place that is convenient. The Judge can also follow the rule of the Supreme Court of this State, or its local equivalent, and decide if a video conference is appropriate.

IT IS VERY IMPORTANT THAT YOU ATTEND THE HEARING IF YOU DO NOT WANT A GUARDIAN OF 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 THE COURT AND TELL THE JUDGE.

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

Guardian ad litem Reports

- Oral versus written
- What to include and omit
- Interim versus final reports
- Ultimate recommendation





McLean County Circuit Court guardianship practices

19

Initiating a Guardianship Case

- Petition for Guardianship
 - ✓ Specify if seeking guardianship of person, estate or both
 - ✓ Specify if seeking residential placement powers
- Summons
 - ✓ Personal service not less than 14 days before hearing
- Oath
- Bond
 - ✓ Only required if seeking guardianship of the estate
 - ✓ Bond should reflect double the amount of estate's value

20

Initiating a Guardianship Case

- Physician's Report
 - ✓ Use statutory form whenever possible
 - ✓ Should be filed as a separate document
 - ✓ Should be marked as confidential
 - ✓ Motion to Seal not required
 - GAL Order
 - ✓ Counsel may select Guardian ad Litem
 - ✓ Court selects GAL for self-represented litigants
 - ✓ GAL can be waived in certain situations
-
-

21

Initiating a Guardianship Case

- Petition for Temporary Guardianship
 - ✓ Must be filed with, or subsequent to Petition for Guardianship
 - ✓ If requesting an emergency hearing, notify the Court
 - ✓ If the Court finds an emergency exists, notice may be excused
 - ✓ If not excused, notice to appoint/revoke temporary guardian may be not less than three days prior to hearing
-
-

22

Scheduling the Hearing

- Contact the Court
 - Most cases heard via Zoom
 - Hybrid hearings an option
 - In person hearings upon request
 - Contested hearings in person
 - Facility where Respondent resides



23



The Hearing

What to Expect in Court

24

The Hearing

- Open proceedings under the Probate Act
- Respondent has a right to counsel
- Respondent has a right to jury trial of 6 persons
 - ✓ Jury determines issue of disability
- GAL report
 - ✓ If uncontested, an oral GAL report is acceptable
- Physician's report
 - ✓ If uncontested, author need not testify



25

The Hearing

- Testimony from Petitioner(s)
 - ✓ Statutory qualifications
 - ✓ If married, one can establish statutory qualifications of the other
- Contested hearings
 - ✓ What is contested? Need for guardianship, guardian or both?
 - ✓ If unable to obtain physician's report, Court can order one
 - ✓ Right to independent examination
 - ✓ Factors in determining disability under Probate Act

26

Petition granted: Now What? Post-Hearing Considerations

- Orders
- Notice
- Training
- Inventory
- Reports



27

Post-Hearing

- Order Adjudicating Disability and Appointing Guardian
 - ✓ Must make factual findings
 - ✓ Co-guardians or different guardians
- Order to Notify Illinois State Police
- Notice to Ward of Right to Seek Modification
- Training
 - ✓ Mandatory training for Guardians of the Person
 - ✓ Can be waived
 - ✓ Certificate of Completion

28

Post-Hearing

- Inventory
 - ✓ Filed within sixty (60) days
 - ✓ Court routinely waives for estates with no/minimal assets
- Annual Reporting requirements
 - ✓ Annual Report on Ward
 - ✓ Accounting
- Terminating guardianships

29

Miscellaneous

- GAL fees
 - ✓ Set for hearing if not agreed
 - ✓ Paid out of ward's estate unless indigent
 - ✓ Fees when ward is indigent
- Successor Guardians
- Transfer to another State



30



Questions?

Thank You!

judge.foley@mcleancountyil.gov

nargis@guardianlawoffice.com

rporter@cwlawoffice.com