

INSTRUCTIONS: HOW TO ASK THE COURT TO APPOINT A GUARDIAN
FOR AN ADULT

Introduction

Appointing a guardian for a person is a serious matter. It takes away the person's freedom to make many of the important decisions in the person's life.

Appointing a guardian should not be done unless there is no other alternative.

Lawyers

Before starting this process, it may help to talk to a lawyer who is familiar with guardianship procedure. If you are unsure about whether you should hire a lawyer, it is a good idea to talk to one about your case before you decide whether you can handle it alone. If you do not know a lawyer, you can call or write:

Lawyer Referral Service of the Alaska Bar Association
P.O. Box 100279, Anchorage, AK 99510-0279
Phone: 272-0352 or 800-770-9999 outside Anchorage (toll free within Alaska)

Costs of the Proceedings

See page 13 for information about who has to pay the costs involved in petitioning for appointment of a guardian.

Definitions of Some Terms Used in These Instructions¹

- Incapacitated Person** A person whose ability to receive and evaluate information or to communicate decisions is impaired to the extent that the person lacks the ability to provide the essential requirements for the person's physical health or safety (health care, food, shelter, clothing, personal hygiene, and protection) without court-ordered assistance.
- Petitioner:** The petitioner is the person who signs the petition asking the court to appoint a guardian.
- Respondent:** The respondent is the person who is alleged to be incapacitated and in need of a guardian.
- Ward:** A ward is a person for whom a guardian has been appointed. (Thus, the "respondent" is called a "ward" after the judge appoints a guardian.)

¹ AS 13.26.005

How To File

Step 1. Fill out the attached *Petition* form ([PG-100](#)). The petition instructions begin on page 8.

If this is an emergency, also fill out the *Emergency Petition* ([PG-101](#)) for appointment of a temporary guardian. See the [PG-520](#) Packet for instructions about the emergency petition.

Note: A situation qualifies as an emergency only if the person for whom you want a guardian appointed needs immediate services to protect the person against serious injury, illness or disease, and the person is not capable of procuring the necessary services. The emergency appointment will be temporary and will only permit the guardian to authorize those specific services.²

Step 2. Make a copy of the *Petition* for yourself.

Step 3. File the original *Petition* at the superior court filing location nearest to where the respondent (the incapacitated person) lives (see list of court addresses on page 11), and pay the filing fee according to [Administrative Rule 9\(b\)\(2\)\(H\)](#). You can deliver the *Petition* to the court in person or mail it along with the filing fee. If you cannot afford this fee, ask the clerk for form [TF-920](#), *Request for Exemption from Payment of Fees*.

If you change your address or phone number after you file the petition and before the court hearing, be sure to notify the court.

Step 4. Appointment of Attorney, Visitor, and Expert.

The court clerk will then give or mail to you an *Order for Appointments and Notice of Hearing* (PG-110). In this order, the court will schedule a hearing on your petition and appoint people (or the Office of Public Advocacy) to perform the following three duties:³

- a. **Attorney for Respondent.** The respondent (the person for whom you want a guardian appointed) has a right to be represented by an attorney in the guardianship proceedings. If he/she cannot afford to hire an attorney, the court must appoint the Office of Public Advocacy (OPA) to represent him/her.
- b. **Court Visitor.** The court visitor is a person appointed by the court to arrange for necessary evaluations to be done and prepare a written report for the court. The visitor will interview the respondent, you (the petitioner), anyone who

² AS 13.26.140

³ AS 13.26.106

seeks to be appointed as guardian, and other people who know about the respondent's abilities.

- c. **Expert.** The expert is a person who has expertise in the area of the respondent's alleged incapacity.

Step 5. Notifying Others About the Hearing.

As petitioner, it is your responsibility to notify several other people about the hearing. When you receive the above order, do the following as soon as possible:

- a. On page 1 of the attached *Notice of Guardianship Hearing* ([PG-115](#)), fill in the time and place of the hearing and the name of the judge or master who will preside.
- b. On page 3 of the *Notice* form, fill in the names of all the specified relatives of the respondent (spouse, parents, adult children or other relatives) that you can locate. Also, fill in the names of the following other types of persons listed on the form:
- respondent's conservator⁴ (if respondent has one),
 - the person who currently has care and custody of respondent,
 - respondent's attorney (ask the court for the name and address),
 - respondent's guardian ad litem⁵ (if one has been appointed by the court),
 - any person that the court has directed you to give notice to, and
 - any other "interested person" (for example: anyone the respondent owes money to, anyone who has a "power of attorney" for the respondent, the "representative payee" for the respondent's social security benefits, the trustee of any trust the respondent has established or of which the respondent is a beneficiary, etc.).⁶

Check the boxes showing how the notice will be delivered to each person.

⁴ A "conservator" is someone appointed by the court to manage the financial affairs of a person who needs this protection because the "protected person" cannot handle these matters. The procedure for getting a conservator appointed is similar to, but not the same as, the procedure for getting a guardian appointed.

⁵ A "guardian ad litem" is a person appointed by the court to protect the rights of the respondent during the guardianship proceedings. AS 13.26.025. See paragraph "f" on page 2 of the [PG-115](#) Notice form for an explanation of when the court will appoint a guardian ad litem (often referred to as a GAL), and the role this person plays.

⁶ See the definition of "interested person" in AS 13.06.050(24).

- c. Make copies of the *Notice* form and send the copies to all the people you listed on page 3 of the *Notice*. You must do this at least 14 days before the hearing.⁷
- (1) If the respondent's spouse and parents are in Alaska, their copies must be sent by either certified mail with restricted delivery or by process server. See the booklet "*How to Serve a Summons in a Civil Lawsuit*" (CIV-106) for instructions on both these methods. If they are outside Alaska, the notice can be sent to them by first class mail.⁸
 - (2) The notices to everyone else can be delivered by either first class mail or hand delivery by you or anyone else. If you use hand delivery, you must list who did (or will do) the delivery.
- d. Proof That Notice Was Given. After the *Notice* has been sent to everyone, you must file proof with the court that this has been done. Before or at the time of the hearing, file the following proof with the court:
- (1) For copies that you mailed by first class mail or hand delivered, file the original *Notice* with the court. The completed certificate of service with your signature on page 3 of the *Notice* is your proof of service. Keep a copy of the *Notice* for yourself.
 - (2) For copies that were delivered by a process server or by certified mail:
 - (a) If you use a process server, the process server will give you a "Return of Service" which lists the documents delivered, on whom and when they were delivered. File the original "Return of Service" with the court. Keep a copy for yourself.
 - (b) If you use certified mail, fill out form [PG-117](#), *Certificate of Service by Certified Mail*. Fill out a separate [PG-117](#) form for each person you serve by certified mail. Attach to it the original green card you got back from the Post Office, showing that the certified mail was delivered to the person to whom you sent it. File the original *Certificate* with the court. Keep a copy of the *Certificate* for yourself.

⁷ AS 13.06.110

⁸ AS 13.26.135 and 13.06.110

Step 6. Visitor's Investigation and Expert's Report.

Within 90 days after the petition is filed, the visitor must file an evaluation report⁹ with the court and give a copy of it to the respondent, the respondent's attorney and to you. In order to prepare this report, the visitor must investigate several aspects of the respondent's current situation, including the respondent's present living arrangement and financial resources.

The visitor must deliver a copy of your petition to the respondent and explain what it means. The visitor will tell the respondent about the respondent's rights, including the right to talk to an attorney (or an expert in the field of the respondent's alleged incapacity) before answering any of the visitor's questions. The visitor will tell the respondent how to contact the attorney appointed to represent the respondent if one has been appointed.

The visitor will then ask the respondent a number of questions in order to determine the respondent's ability to care for himself/herself and the types of help the respondent needs. The visitor will also interview you (the petitioner) and other people who can provide information needed for the visitor's report.

Any report by the court-appointed expert will be attached to the visitor's report.

Step 7. Response to Visitor's Report.

When you receive the visitor's report, you have 10 days to file a written response to it if you want to.¹⁰ If you need more time, you can ask the court for it, but you must explain why you need the extra time. The respondent can also file a response within that 10-day time period.

Your response should include the following information:

- a. A "case caption" (top of form) like the one on page 8 (including the name and location of the court, the name of the case, and the case number. Instead of "Petition for Appointment," the title of your document should be "Petitioner's Response to Visitor's Report."
- b. The date of the visitor's report.
- c. The paragraph number of each section of the visitor's report that you want to comment on and your comments on that section.
- d. Your signature, printed name, address, and daytime telephone number.

⁹ See AS 13.26.108 for a description of all the things the visitor's evaluation report must contain.

¹⁰ AS 13.26.108(e)

- e.. A certification that you sent a copy of your response to the respondent’s attorney, the court visitor and any other interested parties. For example:

I certify that on _____ (date) _____,
I mailed a copy of this response by first
class mail to:

Respondent’s Attorney: _____

Court Visitor: _____

Others: _____

(your signature)

Step 8. Court Hearing.¹¹

The hearing must be held within 120 days after you file your petition unless the court postpones the hearing for cause.¹² The court might need to postpone the hearing, for example, if the case is contested and additional medical examinations for the respondent are needed.

The respondent has the right to be present at the hearing. Usually these hearings are closed to the public, but the respondent gets to choose whether the hearing will be open to the public or closed. Usually the hearing is before a judge or master alone, but the respondent can ask for a jury trial on the issue of incapacity if the respondent wants one.

At the hearing, the respondent has the right to present evidence and to cross-examine adverse witnesses. The respondent can remain silent (and not answer any questions) if the respondent wishes to.

As the petitioner, you have the burden of proving by clear and convincing evidence that the respondent is an “incapacitated person” (as defined on page 1) and that there are no adequate alternatives to a full guardianship.¹³

The hearing will usually proceed as follows:

- a. The judge will identify everyone present (for the hearing record).
- b. If an attorney for the petitioner or the respondent is present, the judge will ask the attorney the status of the case (whether it is contested or not).

¹¹ AS 13.26.113

¹² AS 13.26.106(a)

¹³ *In re O.S.D.*, 672 P.2d 1304 (Alaska 1983)

- c. The judge will ask if there are any additions or corrections to the Visitor's Report and if there are any objections to it.
- d. If the case is contested, the judge will ask whether the dispute is about the capacity of the respondent to take care of himself/herself or about who should be appointed guardian. In a contested case,
 - (1) You may be required to testify under oath and/or call witnesses to testify in support of your petition.
 - (2) The judge may have to postpone the hearing if it is going to take a long time to hear all the necessary testimony.
 - (3) The judge may order mediation under Probate Rule 4.5. (The court's order will state who the mediator will be, when mediation must begin and how the costs of the mediation will be split between the parties.)
- e. If the case is not contested, the judge may ask you questions in order to help the judge decide the following issues:
 - (1) whether the respondent needs a guardian,
 - (2) whether there are any alternative ways of taking care of the respondent's needs without appointing a guardian, and
 - (3) who should be appointed guardian (considering the priorities for appointment set forth in the Alaska Statutes).
- f. If the judge decides it is necessary to appoint a guardian, the judge must consider the respondent's preference as to who should be appointed.
- g. If the judge appoints a guardian, the judge will explain to the respondent that the respondent has the right to request, at a later time, that the guardian be dismissed or that the guardianship order be changed.¹⁴

¹⁴ The judge is required to do this by AS 13.26.113(h). Form PG-190 can be used to file such a request with the court.

How to Fill out the Petition Form

Fill in the top of the form as shown in the following illustration:

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT <u>City Where Court is Located</u>	
In the Matter of the Protective Proceeding of))))) <u>Name of Person Who Needs a Guardian</u>) Respondent) _____)	CASE NO. _____ PETITION FOR APPOINTMENT OF A <input checked="" type="checkbox"/> GUARDIAN <input type="checkbox"/> CONSERVATOR (AS 13.26.105) (AS 13.26.180) FOR AN ADULT

Print clearly, using black ink.

1. Check the first box in section 1 to request appointment of a guardian. You do not need to check the second box (requesting appointment of a conservator) if you are requesting a full guardianship rather than a partial one. A full guardian automatically has the powers of a conservator. See paragraph 2.d below.
2. Fill out all the rest of the form, including the “conservatorship” questions on pages 6-7.

The following is some additional information about some sections:

- a. **Section 5.** Financial Abuse Petition. Check the box indicating whether a petition to protect the respondent from financial abuse has been filed. Such a petition might be filed if, for example, someone is taking the respondent’s money or property or using the respondent’s money or property in a way that does not benefit the respondent. The forms for asking for protection from this type of abuse are PG-800 to PG-850. See the PG-850 instructions.
- b. **Section 6.** Home State. The court needs to know the respondent’s “home state” in order to decide whether Alaska courts have the authority to appoint a guardian in this case. If Alaska is not the respondent’s “home state,” the court may request more information to determine whether it has authority to appoint a guardian or whether the case should be filed in the courts of a different state.¹⁵
- c. **Section 12.** Nature and degree of respondent’s incapacity. In this paragraph, you must describe the respondent’s impairment (why the respondent is an “incapacitated person” as defined on page 1). If you have a doctor’s diagnosis, you can write that here. Attach an extra page if you need more room.

¹⁵ See AS 13.26.010(c), AS 13.27.110, and AS 13.27.180(2) [defining “home state”]

- d. **Section 13.** Facts to support allegation of incapacity. Describe the things the respondent cannot do to take care of himself/herself. Attach an extra page if you need more room to describe this.
- e. **Section 14.** In this section, you must choose between requesting a full guardianship or a partial guardianship. See the list of the powers and duties of a full guardian on the next page. For a more complete description of a full guardian’s duties, see the booklet *Powers and Duties of a Full Guardian of an Adult* (PG-510), available at the court and on the court system’s website. If you want the guardian to have all these powers and duties, check the “Full guardianship” box.

If you believe the guardian only needs limited powers and duties (for example, the power to arrange for medical care and consent to medical treatment), check the “Partial guardianship” box and describe the powers and duties the partial guardian should be given.

Powers and Duties of a Full Guardian

A full guardian has nearly the same powers and duties to the ward as a parent does to a minor child. However, the guardian does not have to pay for the care and maintenance of the ward from the guardian’s own funds, and the guardian is not personally liable for harm done by the ward. (Note: After a guardian is appointed, the “respondent” is called a “ward.”).

The powers and duties of a full guardian include, but are not limited to, the following:¹⁶

- (1) Housing. The guardian must decide where the ward will live.
- (2) Care, Comfort and Maintenance. The guardian must make sure that the ward is cared for and provided with food, clothing, personal hygiene assistance, transportation, social and recreational opportunities, etc.
- (3) Health and Safety. The guardian must make sure the ward receives health care (including mental health care) and protection. The guardian may consent to medical and other professional care for the ward. The guardian must also make sure the ward receives services to develop or regain the ability to take care of himself or herself, to the maximum extent possible.
- (4) Rights. The guardian must make sure the ward’s personal, civil and human rights are protected (by filing lawsuits or taking whatever other action is necessary).
- (5) Finances. The guardian has the powers and duties of a conservator (unless a separate conservator has been appointed). That means the guardian is responsible for managing the ward’s money and property and using those assets to provide the care the ward (and any dependant of the ward) needs.

- f. **Section 16.** In this section, you may recommend who should be appointed guardian. If you do, you must also state (1) “this person’s priority under AS 13.26.145” and (2) names and addresses of person’s with higher priority. AS 13.26.145 states that qualified persons have priority for appointment as guardian in the following order:

¹⁶ AS 13.26.150(c) and AS 13.26.116(b)
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Instructions for Adult Guardianship Petition

- (1) any person or organization nominated by the respondent (the incapacitated person) if the court believes the respondent is able to make an informed choice
- (2) respondent's spouse
- (3) respondent's adult child or parent
- (4) a relative of the respondent with whom the respondent has resided for more than six months during the year before the petition was filed
- (5) a relative or friend of the respondent who has demonstrated a sincere, longstanding interest in the respondent's welfare
- (6) a private professional guardian
- (7) the public guardian

Therefore, for example, if you recommend that one of the respondent's adult children be appointed guardian, you would write "#3" on the "priority of appointment" line. Then, on the line for naming those with higher priority, you would list the names and addresses of anyone the respondent has picked to be guardian (priority #1) and the respondent's spouse (priority #2). If there is no one in these two higher priority categories, you should write that in this section. Also, if there are others in category #3 (for example, parents or other adult children), you should state that too.

When more than one person has equal priority for appointment, the court will select the person it considers to be the best qualified.

Also note that, if it is in the respondent's best interest, the court may decline to appoint a person who has priority and instead appoint a person with a lower priority or no priority at all.

- g. **Section 19.** This section asks who should be appointed conservator. (Note: A conservator has the power to manage the property and financial affairs of the respondent; and a "full" guardian also has the powers of a conservator.) According to AS 13.26.210, people have priority for appointment as conservator in the following order:

- (1) an individual or qualified conservator nominated by the protected person if the protected person is 14 or more years of age and had, in the opinion of the court, sufficient mental capacity to make an informed choice;
- (2) the spouse of the protected person;
- (3) an adult child or a parent of the protected person;
- (4) a relative of the protected person with whom the protected person has resided for more than six months during the year before the filing of the petition;
- (5) a relative or friend of the protected person who has demonstrated a sincere and longstanding interest in the welfare of the protected person;
- (6) a private professional conservator;
- (7) the public guardian.

If, for example, you recommend that respondent's adult child be the conservator, write "#3" on the "priority for appointment" line. Then, on the next lines, list the name and address of everyone with a higher priority. Also, list anyone with an equal priority. If there is no one with an equal or higher priority, write that on these lines.

4. Sign and date the Petition on page 7. You will also need to complete the "Verification" section that follows your signature. You must do this in front of a notary public. A court clerk can provide this notary service for you (at no charge) when you bring the Petition to court. You must bring a photo ID with you for the notarization.

SUPERIOR COURT FILING LOCATIONS FOR GUARDIANSHIPS

ANCHORAGE: Probate Office, 825 W. 4th Avenue, Anchorage, AK 99501-2004

BARROW: Box 270, Barrow, AK 99723-0270

BETHEL: Box 130, Bethel, AK 99559-0130

CORDOVA: Box 898, Cordova, AK 99574-0898

DILLINGHAM: Box 909, Dillingham, AK 99576-0909

FAIRBANKS: Probate Dept., 101 Lacey Street, Fairbanks, AK 99701-4765

GLENNALLEN: Box 86, Glennallen, AK 99588-0086

HOMER: 3670 Lake St., Building A, Homer, AK 99603-7686

JUNEAU: Box 114100, Juneau, AK 99811-4100

KENAI: 125 Trading Bay Drive, Suite 100, Kenai, AK 99611-7717

KETCHIKAN: 415 Main St., Rm 400, Ketchikan, AK 99901-6399

KODIAK: 204 Mission Road, Rm 10, Kodiak, AK 99615-7312

KOTZEBUE: Box 317, Kotzebue, AK 99752-0317

NAKNEK: Box 229, Naknek, AK 99633-0229

NOME: Box 1110, Nome, AK 99762-1110

PALMER: 435 S. Denali, Palmer, AK 99645-6437

PETERSBURG: Box 1009, Petersburg, AK 99833-1009

SEWARD: Box 1929, Seward, AK 99664-1929

SITKA: 304 Lake St., Rm 203, Sitka, AK 99835-7759

UNALASKA: Box 245, Unalaska, AK 99685-0245

VALDEZ: Box 127, Valdez, AK 99686-0127

WRANGELL: Box 869, Wrangell, AK 99929-0869

If your nearest court is not on this list, check with that court to find out if a petition for appointment of a guardian can be filed there.

Costs In Guardianship Proceedings

Cost	Who Must Pay
Filing Fee	The petitioner must pay the filing fee according to Administrative Rule 9(b)(2)(H) . (unless the court waives the fee because the petitioner is indigent). ¹⁷
Attorney for Petitioner	The petitioner must pay if the petitioner hires an attorney.
Attorney for Respondent (incapacitated person)	<p>The respondent must pay if he/she is financially able to pay for the attorney.</p> <p>If the respondent is not financially able to pay for an attorney, the court will appoint the Office of Public Advocacy (OPA) to represent the respondent, and the state will pay for it.¹⁸</p> <p>If the court finds that the petitioner initiated a proceeding that was malicious, frivolous, or without just cause, the court may require the petitioner to pay some or all of the costs of the respondent's attorney.¹⁹</p>
Court Visitor	The state will pay for the costs of the Court Visitor, unless the petition is malicious, frivolous or without just cause (in which case, the petitioner must pay). ²⁰
Expert	The state will pay for the costs of the Expert appointed by the court under AS 13.26.106(c), unless the petition is malicious, frivolous or without just cause (in which case, the petitioner must pay). ²¹
Second Expert Requested	Unless financially unable to do so, the respondent must pay if the by Respondentrespondent asks the court to appoint another expert to examine therespondent and testify for the respondent at the hearing. If the respondent is financially unable to pay, the state will pay. If the court decides the case is malicious, frivolous or without just cause, the court can order the petitioner to pay. ²²
Guardian Ad Litem	If the court appoints a Guardian Ad Litem (someone to help the respondent with the court proceeding), the respondent must pay. If the respondent cannot afford to pay the state will pay. If the proceeding is malicious, frivolous or without just cause, the court can order the petitioner to pay. ²³

¹⁷ Administrative Rule 9(b)(4) and (f)(1).

¹⁸ AS 13.26.106(b), 13.26.131(b) &(c), and AS 44.21.410(4).

¹⁹ AS 13.26.131(d)

²⁰ AS 13.26.131(a) and (d); AS 13.26.106(c) and (d); AS 44.21.410(2).

²¹ AS 13.26.131(a) and (d); AS 13.26.106(c) and (d); AS 44.21.410(2).

²² AS 13.26.109(d); 13.26.131(b), (c) and (d)

²³ AS 13.26.025; 13.26.131(b), (c) and (d); AS 44.21.410(3).