

What you need to know
about getting a guardianship for a minor.



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Disclaimer — Please read

This packet of information was prepared to answer general questions and give general advice about the law in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

WARNING!

Before you proceed with using this packet, you should ask yourself the following questions:

1. Have I tried to consult a private attorney?

No self-help publication, packet, or form can replace the advice and experience of a licensed attorney. An attorney may not cost as much as you think, especially if you just need to ask questions. Before you proceed on your own, call several local attorneys, compare prices, and find out whether you can pay an attorney or not.

2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?

There are some agencies which provide legal assistance for free to certain groups of individuals. While they may not be able to help you with a particular problem, it does not hurt to call them to find out before you proceed on your own. What follows is a list of legal service agencies that may or may not be available to help with your case:

Land Of Lincoln Legal Assistance

Serves the 65 southernmost counties in Illinois

Toll free: 877-342-7891

For additional information, you may visit their website at:

[Http://www.lollaf.org](http://www.lollaf.org)

Prairie State Legal Services

Serves most of northern and north central Illinois outside of Cook County

815-965-2134

800-331-0617

<http://www.pslegal.org/>

Coordinated Advice and Referral Program for Legal Service

serving Cook County, 312-738-9200

and Will County

815-727-5123

3. Is this something that I can do on my own?

Obtaining a guardianship is a difficult procedure, and if at all possible, a lay person should seek out legal assistance when attempting to do so. If legal assistance is not an option, it is very important that you read each section of this packet completely before you take any action in regard to a legal problem including using any forms that supplement this packet.

If you have trouble following directions, or have difficulty reading, writing, or speaking in public, you may not be able to follow the directions and advice in this packet. If this is the case, find a friend or someone who can help you before you proceed on your own.

Because this packet discusses terms and actions you are likely not familiar with, you will need to refer back to the following sections from time to time when reading this packet:

Who are these people

This section describes people that you may come into contact with in regard to a particular legal problem. It is important that you understand who these people are and what they do and don't do.

What these legal terms mean

This section defines commonly used legal terms in words that you can understand. To use the rest of this packet and any supplemental forms, you need to understand exactly what these terms mean.

Summary of the law in this area

This section contains summaries of important areas of the law that you need to know.

Guardianship Time Table

This section list the standard deadlines for filing guardianship documents.

Popular filing questions

This section answers commonly asked questions about filing documents.

WHO THESE PEOPLE ARE



Judge:

The judge is the person who presides or rules over the courtroom. In most cases the judge makes all of the final decisions and approves all agreements. When a judge makes a decision or a finding, it has the full force of law. The judge also sets out and enforces court rules (like dress codes) and in some courthouses, the judge decides when the cases are scheduled.



Circuit Clerk:

The circuit clerk is responsible for creating, managing, and updating court files. When you want to put something in a court file, see a court file, or make a copy of something in a court file, you need to talk with the circuit clerk's staff. In some courthouse, the circuit clerk also decides when cases are scheduled.



Sheriff:

The sheriff's main duty is to keep the peace and to enforce the law. However, the sheriff's role in the legal system is usually to *serve* (give notice) to people that are a party in a court proceeding. The sheriff does this by giving the person a notice called a **summons**. The sheriff also enforces the judge's orders.



Attorney:

An attorney is someone who can help you with your legal problem by providing you with advice about the law, the legal system, and the merits of your case. An attorney can act as your advocate and represent you in court and in negotiating settlements.



Mediator:

A mediator is someone who can meet with you and the person with whom you have a dispute and help you come to a resolution you can both agree on. A mediator is neither a judge nor *your* attorney; but a mediator can help you make a decision. In some counties, mediation is required in certain types of cases, including child custody.

WHAT THESE LEGAL TERMS MEAN

“ILCS”- is the acronym for the Illinois Compiled Statues. The Illinois Compiled Statutes are the laws that govern the people in Illinois. The numbers that flank ILCS will refer to the chapter and section where the specific law can be found .

Minor- A person under the age of 18 years old (755 ILCS 5/11-1). Sometimes the word “ward” will be used instead of minor.

Guardian- Illinois statutes define who can serve as guardian as: a person 18 years or older; a resident of the United States; not of unsound mind or a disabled person; and in some instances, not convicted of a felony (755 ILCS 5/11-3).

Guardian of the Estate- Agent responsible for frugally handling the minor’s property matters for the benefit of the minor and the minor’s dependants. The guardian of the estate will need to petition the court for permission for any investment or trust created on behalf of the minor.*

Guardian of the Person- Agent with custody of the minor as well as responsibility for making decisions regarding the minor’s schooling, and physical and emotional well-being.*

***Two different persons can be appointed for the two types of guardianships.**

Guardian ad litem (GAL)- A independent professional appointed by the court to express whether or not a guardianship is in the best interest of the minor.

Petition- A formal document requesting the court to make a finding or adjudication.

Petitioner-Person who brought the matter (or petition) to court.

Short-term guardian- A person appointed by the guardian (and not the court) to take the place

of the guardian when the guardian is unavailable. The paper making the assignment must be signed by two other credible witnesses and the short-term guardian (although the guardian can sign at a different time). A short-term guardian can only serve for a maximum period of 60 days in a given year, and there can not be more than one instrument (i.e. guardianship) in force at any given time (See 755 ILCS 5/11-5.4 or separate form available through the Self Help Legal Center).

Standby guardian- A person appointed by the court to act as guardian when the guardian or parent dies or is no longer able or willing to act as guardian (See 755 ILCS 5/11-5 or separate form available through the Self Help Legal Center). The appointment of the successor guardian must be made in writing and witnessed by two persons not a party to the guardianship (e.g. in a will).

Surety-A person or corporation that is bound in writing for the debt of another (i.e. guaranteeing the payment). See 740 ILCS 155/1

Temporary guardian- The court may appoint a temporary guardian where there is a showing of necessity for the immediate welfare of the minor. The temporary guardian powers are determined by the court and its order.

Before deciding to bring a guardianship action you should investigate whether other options, such as a power of attorney, could be utilized rather than a guardianship. At the Self Help Legal Center website under “Children” there is a packet entitled:

**Legal Issues for Grandparents
Raising their Grandchildren and other
Young Family Members .**

The above packet describes the different means in which grandparents can obtain legal authority over their grandchildren: but the packet may also be helpful for *all* persons that are uncertain what path they should take to gain authority or possession over the children in question.

Summary of Law
GUARDIANSHIP FOR MINOR CHILDREN

Under Illinois law, if the parental rights of a minor have not been assigned to another by a parent or the court, there is a *rebuttable presumption* that the parent is willing and able to care for the minor (see 755 ILCS 5/11-5(b)). That is to say, the court will have to assume that the parent is willing and able to care for the minor unless the petitioner has sufficient evidence to overcome the assumption. If a parent (natural or adopted) retains their parental rights and is willing and able to act as guardian, then the court will lack the jurisdiction to go forward with a guardianship. But sometimes, for various reasons, parents are unable to care for their children (e.g., death or incarceration). If a petition is filed by a reputable person, a court may find it is the best interest of the child or “minor” to appoint a guardian to represent the minor’s person and or their estate.

If a situation arises where a minor has no parent capable of caring for them, an interested party can petition a court for guardianship of the minor. When the minor reaches the age of majority--18 years of age--the guardianship will no longer be in effect (755 ILCS 5/11-141). If the minor is also disabled, then at the age of 18 a petition for guardianship for a disabled adult may need to be filed (see guardianship for disabled adults packet).

There are four different types of guardianships for minors: plenary, limited, short-term, and stand-by guardian. The four types of guardianships can be broken down further into guardianship of person and guardian of the estate: in some jurisdictions guardians of both person and estate are called plenary guardians, in other jurisdictions plenary simply refers to the fact that

the guardianship does not have an end date. This packet is designed to assist those persons seeking a plenary guardianship, of either person or estate or both, but if you are seeking a plenary, limited, or stand-by guardianship (sometimes called successor guardianship) the following materials should be prepared for court:

- 1) Petition for Appointment of a Guardian;
- 2) Motion for Guardian Ad Litem*;
- 3) Order for Guardian Ad Litem*;
- 4) Appearance and Consent †
- 5) Notice;
- 6) Certificate of Mailing;
- 7) Notice of Filing;
- 8) Certificate of Service;
- 9) Findings of Fact, Conclusions of Law and Order Appointing Guardian;
- 10) Oath of Guardian;
- 11) Letters of Office–Guardian of the ...;
- 12) Summons for Appointment of Guardian/Notice of Rights of Respondent;
- 13) Bond of Legal Representative-No Surety;
- 14) Bond of Legal Representative- Surety;
- 15) Verification by Certification.

*These forms will need to be prepared if ordered by the court or the judge.

†This form to be used if a parent agrees to the guardianship.

A guardianship proceeding generally starts with a petition filed in the circuit clerk's office in the county where the minor resides. If the minor lives outside of Illinois, the petition should be filed in the county in which they own land. You should check to see if the county in which you are filing has their own rules, practices, or forms regarding seeking guardianship (e.g., Cook County). The court can not appoint a person guardian of a minor when the court has found that the

candidate has caused or contributed to the minor being abused or neglected.

There is usually a filing fee that must be paid to file a petition seeking guardianship. You should contact the Circuit Clerk's Office in which the petition will be filed to find out how much the fee will be. If the person seeking guardianship is indigent, or poor, you may be able to file a Motion to File Guardianship Petition Without Payment of Fees (form in supplement). Remember the court will want to know whether the petitioner is asking to be guardian of the minor's person and or estate. If the minor has no property, there is no need for a guardian of estate. More than one minor may be included on a petition for guardianship for person **but not** for estate.

Under 755 ILCS 5/11-8 the petition seeking guardianship should set out:

- the name, date of birth, and address of the minor;
- the facts surrounding the need for a guardian including an account of any legal actions against the parents or minor that lead to the need for a guardianship ;
- the name, age, occupation and address of proposed guardian;
- the name and address of any previously named agents under powers of attorneys;
- the names and address of the nearest relatives in the following order–
 - 1) spouse, if any
 - 2) parents, and adult brothers and sisters, if any, if none then
 - 3) nearest adult relative
 - 4) name and address of the person(s) currently having custody of the minor
- the approximate value of the estate at issue;
- the amount of anticipated annual gross income;
- a copy of any writing that sets out the parents' desire for guardianship (e.g. parent's will or appearance and consent);
- the date of the minor's parents death or status of the consent of the minor's parents to the guardianship;

- the written preference of the minor for guardian if the minor is 14 years or older.

If the petitioner wants to place the minor in a residential facility the proposed guardian should get permission from the court. Therefore, if the petitioner needs the authority to place the minor in a residential facility, then the petitioner should request permission to do so in the petition and order for guardianship. In some instances (e.g. placement in a mental institute) the Mental Health Act will trump any authority given by the guardianship.

When drafting the petition for guardianship keep in mind that the court has to make a decision about the minor's, and possibly the parents', rights; so the judge will want to know as much as possible about why the guardianship is necessary. The court will also examine the evidence to determine how broad to make the guardianship, and whether all the appropriate parties have been notified of the guardianship.

After filing the petition for guardianship, the court will probably set the matter for a hearing within 30 days. The petitioner will have the obligation to send the petition **and** notice to all of the individuals named in the petition either in person or by mail, at least three days before the hearing is scheduled, and should do the same for the minor if she or he is 14 years old or older. After the filing of the petition for guardianship, the judge may appoint a guardian ad litem (GAL). The court may ask the petitioner submit a motion and or order appointing the GAL; these forms are found in the supplement. If a GAL is appointed the petitioner will need to make sure a copy of the order of appointment, the petition for guardianship and the notice of hearing are all sent to the GAL.

The GAL is responsible for submitting a report based on their own independent review of

the minor's situation. The GAL may also attempt to discover the minor's position regarding the petition for guardianship and report back to the court what they believe would be in the best interest for the minor. When the petition goes to hearing, or shortly thereafter, the GAL will generally submit a bill for his or her services. The court may order the petitioner to pay for the GAL's fees, or have the fee taken from the minor's estate.

At the hearing, the petitioner will have the burden of going first in the hearing. In preparing the evidence, the petitioner should keep in mind that the court will want to determine whether the minor needs a guardianship and whether it is in the best interest to appoint a guardian. The court will also need to know the living and schooling arrangements proposed by the potential guardian. Generally, the evidence is presented by the petitioner through his or her testimony or the testimony of his or her witnesses after they take the witness stand. It is advisable for the petitioner to go through and review the paperwork that has been filed in court, and write down questions for the witnesses that would bring out the information contained in the paperwork, and any new information obtained since the filing of the paperwork.

If the court finds no basis for a guardianship, the petition will be dismissed. If the court finds that the minor needs a guardian only for their person and not their estate the court will enter an order for a limited guardianship or guardianship over the person. But if the court finds that a limited guardianship is not sufficient and it is in the best interest of the minor to appoint a guardian over the minor's person and estate it may enter a guardianship for both, often called a plenary guardianship.

Before a guardian can begin his or her duties as guardian they will have to file an oath with the court that they will "...faithfully discharge the duties..." involved in being a guardian (form in

supplement). A well prepared petitioner will have the oath prepared before the hearing. In addition, the court can require the guardian post a bond to ensure the faithful performance of his or her duties (see 755 ILCS 5/12-2). The amount of bond shall be 2 times the amount of the ward's estate if a) a person acts as surety, or b) 1 ½ times the amount of the ward's estate if a corporation acts as surety. The bond or security may be excused by the court or by a will (see 755 ILCS 5/12-5).

If the court appoints a guardian of the minor, then the guardian will be given letters of office. The letters of office should be sufficient to notify the parties that interact with the minor that the guardian is to make all further decisions regarding the minor's health and or property, depending on the court's order.

After being appointed guardian, the person shall have the duty to nurture and care for the minor and, if applicable, the minor's children. If ordered by the court, a personal guardian shall have custody of the ward and the ward's minor children, but cannot deprive the ward's spouse of custody of the children without the spouse's permission. A guardian of a person may be asked to give a regular report of the minor's physical condition and living arrangements (see separate report packet).

The guardian of an estate may, with the permission of the court, make frugal investment decisions, that are in the best interest of and for the comfort of the minor and his or her dependents. Within 60 days of being appointed guardian of an estate, the guardian will need to prepare an inventory of the estate (see separate report packet). In addition, a guardian of an estate will be required to provide a verified accounting of the status of the ward's estate (see separate

report packet) . The accounting is usually required once a year, but the guardian should write down what was said by the judge in open court or check the docket entries (i.e. notes written in the file by the judge) to verify how often the court order the accounting. Keeping detailed records throughout the year of expenditures and income makes the guardian's reporting easier.

TIME TABLE FOR EVENTS

1. Petition filed.
2. Hearing usually scheduled within 30 days from the date the petition is filed.
3. Temporary Hearing. Can be scheduled any time the court will allow. The maximum period for a temporary guardianship is 60 days.
4. Notice of Hearing. The petitioner must give notice of the time and place of the hearing in person or by mail to those persons named in the petition including the minor, not less than 3 days prior to the hearing. 755 ILCS 5/11-10.1.
5. Inventory. Within 60 days from being appointed guardian of the estate, the guardian must file an inventory of the real and personal property of the ward. 755 ILCS 5/14-1.
6. Reports. The guardian of the minor may be asked to file a report with the court stating the minor's status at regular intervals as indicated by the judge.
7. Accounts. A guardian of the estate may also be directed by the court to file an account of all financial transactions made on behalf of the minor.

Popular filing questions

Q: What is a court file?

A: The file is the way that the courthouse keeps track of a lawsuit.

The file includes all of the documents that were filed, notices of hearings, notes by the judge and clerk, and letters to and from the judge and clerk.

Q: When do you need to file a document in a court file?

A: Generally, you will file a document when you want to: have evidence that a task was completed, record an event or a statement, or give notice to someone about something.

Q: What does it mean to file a document in a court file?

A: Generally, filing a document means giving the Circuit Clerk a copy of a document so that he/she can place it in the court file you want it to go in. When the Clerk files the document, he/she will stamp it with a stamp that says the date (and sometimes the time) the document was filed.

Q: Does filing a document make it legal?

A: No. The Clerk will not check to make sure that your document is in compliance with the law. Most of the time you can file anything you want as long as you are willing to pay for the filing costs. It does not mean, however, that what you have filed is correct.

Q: Why is filing so important?

A: Most of the time, filing is the primary way to show that you have met the deadline for something — either to initiate a lawsuit or to notify someone of a lawsuit or a hearing. Filing is also the way that you notify the court of your answer (response) to lawsuit started against you.

Please note that failure to file something on time can cause you to lose your right to proceed with your claim or you may be forced to start over.