

A Maryland Judiciary Production
My Laws, My Courts, My Maryland
Introduction to Adult Guardianship

Welcome to the Maryland Court's video series on Adult Guardianship.

You are watching this video series because you are thinking about becoming a guardian. Or, perhaps, the court has appointed you as a guardian. Either way, it is important for you to understand the responsibilities of guardianship.

This is the first of three videos.

This video, *Introduction to Adult Guardianship*, will explain what guardianship is, when guardianship is appropriate, and the legal process for becoming a guardian.

The next video, *The Role of Guardian of the Person*, explains your duties once you become a guardian of the person. The third video explains your duties if you are appointed guardian of the property.

I encourage you to watch all three videos. Together, they will help you understand the guardianship process and your potential new role as guardian.

Let's begin with an Introduction to Adult Guardianship.

What is adult guardianship?

It is the legal arrangement between the court, the guardian, and the ward. Adult guardianship refers to guardianship of people who are over the age of 18.

A guardian is a person who has the legal authority and duty to take care of a person who is unable to care for themselves or their finances, or both. A person may need a guardian because they have a serious medical condition such as Alzheimer's disease, drug addiction, mental illness, or they have suffered a stroke. Until a guardian is appointed, the person for whom guardianship is being sought is the "alleged disabled person," or ADP. We will refer to this person as the ADP throughout the video.

Once the court has granted a guardianship, the ADP is called the "ward"

There are two types of guardians.

A guardian of the "person" must make sure the ward has what he or she needs to live day to day. This includes food, clothing, shelter, and recreation. The guardian of the person also makes decisions about the ward's medical care and housing.

A guardian of the “property” is responsible for managing the ward’s money and other assets. Sometimes a guardian of the property is called a “conservator.” In Maryland, “guardian of the property” is more commonly used. You can be appointed guardian of both person and property.

Appointment of a guardian is a serious step. It can take away a person’s right to make personal and financial decisions. Just because a person believes that someone needs a guardian doesn't mean a judge will agree. Maryland courts look at three factors when deciding whether to appoint a guardian.

First, the court must be convinced that the ADP needs a guardian. The fact that someone has a diagnosis or disability does not mean a person needs a guardian. The real test is whether that person has the ability to make and communicate sound decisions. This is known as “capacity. “ The court must have proof that the person lacks capacity. Part of this proof comes from two medical professionals who examine the ADP and certify that the person lacks capacity. This will be discussed in detail later in this video.

The second factor that the court will consider is whether there are other ways to protect the ADP without a guardian. The court will appoint a guardian if there is “no less restrictive alternative.” Examples of less restrictive alternatives are powers of attorney and advanced directives, representative payees, and authorized payers. A lawyer can help you explore these and other options.

The third factor that the court will consider is whether the person asking to be guardian is qualified and able to carry out the duties of a guardian. In other words, is he or she the best person for the job? The judge will consider such things as qualifications, willingness to serve, and the relationship to the ADP. The first person the judge will consider is any person the ADP had chosen prior to becoming disabled. Next, the court will consider family members, including spouses, parents, and children. The judge may appoint co-guardians to share responsibility. For example, the court may appoint a brother and sister as guardian for their disabled parent. Also, one person can be guardian of the person and another can be guardian of the property. While you do not have to be a Maryland resident to serve as guardian, the court prefers that the guardian live close to the ADP. Finally, the court might not appoint as guardian a person who has been convicted of a felony, crime of violence, assault in the second degree, or certain sexual offenses. A conviction is not, however, an absolute bar to appointment. If this applies to you, you will have an opportunity to explain to the court why the appointment should be made.

Remember, the court will consider three things when deciding whether guardianship is necessary: Does the ADP lack capacity? Is there a less restrictive alternative? Is the person asking to be guardian qualified?

Now that we have discussed what guardianship is, and when it is appropriate, let’s turn to the legal process for appointing a guardian.

You may wish to have a lawyer help. The process can be complex. Before you proceed, be sure that you are comfortable handling the proceedings on your own. With or without a lawyer, the court will expect

you to follow the same rules and laws. For more information, see the My Laws, My Courts, My Maryland video, *Should I Represent Myself?*

Begin the guardianship process by filing a petition asking the court to appoint a guardian for the person in need. You can download the petition form – look for form CC-GN-002 -- from the Maryland Court’s website at www.mdcourts.gov. Step by step instructions on how to fill out the form are also online.

If you fill out the petition, you are called the petitioner. Most of the time the petitioner is also asking to be the guardian, but this does not have to be the case. For example, a wife can be the petitioner for her disabled husband, but ask that an adult child be the guardian.

If you are the petitioner, you must answer questions about the ADP and the proposed guardian. You must describe the disability, how it affects the ADP’s ability to function, and what less restrictive alternatives have been considered and tried. You must explain to the court why a guardian should be appointed. Finally, provide a list of the ADP’s property and assets.

It is important to take time to read the petition and answer the questions. If the petition is not correct or complete, your case will be delayed or possibly dismissed.

Let’s go over some of the sections of the petition that deserve special attention.

First, you must provide a list of names and addresses of all “Interested Persons.” The law defines who is considered an “Interested Person,” and includes spouses, parents, children, and other relatives. Interested persons may also be agencies that provide benefits or services to the ADP. These agencies might include a local agency on aging or a health care facility where the ADP lives, the Department of Social Services, or the Social Security Administration.

In the second part of the petition, you must include two certificates of incompetency from medical professionals. Only specific medical professionals may provide these certificates. They must come from either:

Two licensed physicians who have examined the ADP,

Or

One licensed physician who has examined the ADP,

And

One licensed psychologist or licensed certified clinical social worker who has evaluated the ADP.

One of the examinations of the ADP **must** happen within 21 days of filing the petition. For example, if you file your petition on March 22nd, the medical examination must take place between March 1st and

March 22nd. If the examination took place before March 1st, it will be too old. You must update the certificate with a new examination of the ADP.

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In the third part of the petition you must provide another name to support the petition. If the ADP lives with you and you are asking to be the guardian, provide the name and address of a person who does not live with the ADP. This person may be a friend, neighbor, or relative who is not an interested person.

Remember, if you have questions about how to fill out the petition, instructions are on the Maryland Court's website at www.mdcourts.gov. You can also visit a Family Law Self-Help Center located at most Circuit Courts.

Once you complete the petition, file it with the court and pay the filing fee. File the petition in the Circuit Court where the ADP lives or is hospitalized, if you are seeking guardianship of the person. If you are seeking guardianship of the property, file in the jurisdiction where the ADP's property is located.

Once you file the petition, the court will appoint a lawyer if the ADP doesn't have one. The lawyer will visit the ADP and represent her wishes and best interests at the hearing.

After you file your petition, the court will mail you a Show Cause Order.

The Show Cause Order provides three important pieces of information.

First, it has the date of the guardianship hearing.

Second, it includes a date by which the ADP and interested persons must respond in writing to explain why a guardian should not be appointed.

And;

Third, the Show Cause Order tells you what you must do to notify the ADP and interested persons about the guardianship hearing. This is called "service of process," which we will talk about next.

"Service of process," also referred to as "service," is a term that describes how people receive notice of your guardianship case. This is a very important step in the guardianship process because it gives the ADP and interested persons a chance to come to court and respond to the guardianship request. You must follow very specific rules for service. These are the Who, What, When, and How, rules.

First, **who** must you serve?

You must serve:

- the ADP,
- the ADP's lawyer, and
- all interested persons listed in the petition.

Second, **what** do you serve?

The ADP and the ADP's lawyer must be served with:

- A copy of the Petition and supporting documents, such as Certifications of Incompetency;
- A copy of the Show Cause Order; and
- An Advice of Rights Form.

You must serve interested persons with:

- A copy of the Petition and supporting documents, such as Certifications of Incompetency;
- A copy of the Show Cause Order; and
- A Notice to Interested Persons.

Find these forms on the Maryland Court's website at www.mdcourts.gov.

Next: By **when** must someone be served?

The Show Cause Order will include the date by which service must be completed.

Finally, **how** do you serve these court documents?

You must serve these individuals in the specific manner required by Maryland law. For step-by-step instructions on this critical step, you should watch the My Laws, My Courts, My Maryland video, *Service of Process*.

Now let's turn to what happens at the court hearing.

A judge will conduct the hearing. Who will be there? The ADP has the right to be present, but doesn't have to be there. The ADP's lawyer will be there. You, the petitioner and your lawyer, if you have one, will also be present. If the proposed guardian is not the petitioner, then both of those people will be there. Interested persons may be there, but they are not required to be in court unless they object to the petition. All who are present will have the opportunity to explain why a guardian should or should not be appointed. If everyone agrees, the judge will appoint a guardian at the hearing. If someone does

not agree, the judge may schedule a trial for a later date. The judge may also appoint a temporary guardian until the trial date. In guardianship of the person cases, the ADP has a right to a jury trial.

The judge's decision will be stated in an official document called an order. If the judge decides to appoint a guardian, the order will name the guardian and the ward. Remember, now the ADP will be known as the ward. The order will also include the guardian's contact information and details about the guardian's powers.

The length of time to complete a guardianship is different in each court. Check with the court where you filed your petition to find out how long your case will take.

Now the guardianship is official. The guardian has legal duties to the ward and to the court. These duties are explained in the videos *The Role of Guardianship of the Person* and *The Role of Guardianship of the Property*.

This has been a production of the Family Division Services of the Circuit Court for Montgomery County and the Access to Justice Department of the Administrative Office of the Courts. For more information, see mdcourts.gov.