

**INSTRUCTIONS FOR COMPLETING PETITION FOR GUARDIANSHIP OF THE PERSON AND/OR PROPERTY OF AN ALLEGED DISABLED PERSON (CC-GN-002) (Md. Rule 10-112)**

Before completing the **Petition for Guardianship of Alleged Disabled Person (CC-GN-002)**, review the **General Instructions (CC-DRIN)** in addition to these instructions. These instructions may assist you and are for informational purposes only. They are not intended as legal advice.

**WHO SHOULD USE THIS FORM?**

Use form CC-GN-002 if you are asking the court to appoint you or someone else as a guardian of the person or property of an alleged disabled person. Use this form if you are not hiring a lawyer to file the case for you. These instructions answer questions including:

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**NOTE:** Guardianship cases can be complicated. You may want to speak with a lawyer.

**WHAT IS GUARDIANSHIP OF THE PERSON OR PROPERTY OF AN ALLEGED DISABLED PERSON?**

**Guardianship of the person:** A court will appoint a guardian of an alleged disabled person if it determines by clear and convincing evidence that a person (the alleged disabled person):

1. cannot make or communicate responsible decisions about themselves because of mental disability, disease, habitual drunkenness, or addiction to drugs, AND
2. there is no less restrictive form of intervention available.

If appointed, the guardian of the person will make decisions about that individual’s health care, food, clothing, shelter, and other related matters.

**Guardianship of the property:** A court will appoint a guardian of the property if it determines that the alleged disabled person:

1. is unable to manage their property or affairs because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, detention by a foreign power, or disappearance, AND
2. has or may be entitled to property or benefits which require proper management.

If appointed, the guardian of the property will make decisions about that individual’s money, income, stocks and bonds, and other financial matters. The guardian of the property may be required to post a bond.

**Guardianship of person and property** – A person may be appointed as guardian of both person and property of an alleged disabled person.

To learn more about adult guardianship, visit <https://mdcourts.gov/video/selfhelp/adult-guardianship-introduction-adult-guardianship>.

## **WHO CAN FILE FOR GUARDIANSHIP?**

Only interested persons can file for guardianship. Interested persons are defined by law. See paragraph 8 of form CC-GN-002 (Petition for Guardianship of Alleged Disabled Person) for a list of interested persons.

If you are not an interested person, but are concerned about risks to the personal or financial well-being of the alleged disabled person if a guardian is not appointed, it is recommended that you speak with a lawyer.

## **HOW DO I FILE FOR GUARDIANSHIP OF AN ALLEGED DISABLED PERSON?**

If you are filing the guardianship case, you are the Petitioner. Use the **CC-GN forms**. **There are six (6) steps:**

**STEP 1. Complete a Petition for Guardianship of Alleged Disabled Person** – Complete Form CC-GN-002.

**Designation of a Guardian of the Property** – The alleged disabled person can designate who they would like the court to appoint as a guardian of the property. Have them complete and sign the **Designation of a Guardian of the Property by a Minor or Disabled Person (CC-GN-009)** and **file the original with your petition.**

### **CC-GN-002 Form Tips:**

- If you are a **co-petitioner** (another person joining the filing for guardianship of the disabled person), complete and sign a Co-Petitioner Information Sheet (CC-GN-018).
- **Paragraph 6:** If you are asking the court to appoint another person as guardian of the person or property, ask that person to complete and sign the Prospective Guardian Information Sheet (CC-GN-023) and file the original with your petition.
- **Paragraph 11(b):** Under Maryland law, (Estates and Trusts Article, § 13-705 (b)), a court will only appoint a guardian of the person if there is no less restrictive form of intervention available that is consistent with the alleged disabled person's welfare and safety. Less restrictive alternatives to guardianship of the person include family guidance, adult protective services, case management, in-home services, transportation and food assistance, social service programs, alternative housing arrangements (e.g., assisted living programs, adult foster care, etc.), advance health care directives, and supported decision-making. List any alternatives that have been attempted.
- **Paragraph 12(b):** List any less restrictive alternatives to guardianship of the property that have failed. Alternatives include use of a representative payee, power of attorney, banking services, joint ownership of bank accounts, court authorization of specific transactions, and trusts.
- **Required Exhibits:** Gather all required exhibits and provide any additional information on separate sheets (**page 6**)
  - Health care professionals (licensed physicians, licensed psychologists, licensed certified social workers-clinical (LCSW-C), or nurse practitioners) who examine or evaluate alleged disabled persons must use the following forms:
    - **Physician's Certificate** (CC-GN-019)
    - **Psychologist's Certificate** (CC-GN-020)
    - **Licensed Certified Social Worker-Clinical (LCSW-C) Certificate** (CC-GN-021)
    - **Nurse Practitioner's Certificate (CC-GN-050) (for petitions filed on or after October 1, 2020 only)**
- One evaluation or examination must have occurred within 21 days before the filing of the petition. Attach the original certificate(s) to the petition.

- If you are not able to have the alleged disabled person seen by a health care professional because they live with or are under the control of someone who refuses to allow the examination or evaluation, complete the **Petition for Appointment of Health Care Professionals** (CC-GN-033), and attach it to the petition.

**STEP 2. File for Guardianship** – The completed petition and required exhibits should be filed with the Clerk of the Court in the appropriate court.

**Where to File for Guardianship** – If the alleged disabled person **lives in** Maryland, file in the **circuit court** in the county (or Baltimore City) in which they are living. Do not file in the county (or Baltimore City) where you live unless you live in the same county as the alleged disabled person.

If the alleged disabled person **does not** live in Maryland, file in the **circuit court** in any county (or Baltimore City) in which they are physically present for at least six (6) months.

If you are requesting a guardianship of the property, file in any county (or Baltimore City) where the alleged disabled person has property, such as a house or bank account.

The court requires you to pay a filing fee. If you cannot afford the filing fees, ask the court to waive the fees at the beginning of your case by filing a **Request for Waiver of Prepaid Costs** (CC-DC-089). See **General Instructions** (CC-DRIN) for information on fees and court costs.

The court will assign your petition a **case number**. It will also issue a **show cause order** that includes:

- the date of the guardianship hearing (STEP 6);
- the date by which service must be completed (STEP 3);
- the date by which the alleged disabled person and interested persons need to respond or “show cause” as to why they think a guardianship is not necessary or why a proposed guardian should not be appointed.

**Remember your case number. Keep a copy of the petition and all attachments for your records.**

**STEP 3. Service of Process** – Service of process is the way the court makes sure that all necessary people receive copies of your guardianship petition. Your case cannot move forward until proper service is made.

**You must serve the alleged disabled person, their attorney (if they have one), AND all interested persons** (see Paragraph 8 of **CC-GN-002** for a list of interested persons). If the alleged disabled person lives with you (the petitioner), service must be made on the alleged disabled person and any additional person named by the court.

Each person to be served must receive:

- 1) A copy of the petition;
- 2) Any papers filed with the court; and
- 3) The **show cause order** issued by the court.

You must also serve the alleged disabled person with an **Advice of Rights**. Use form **CC-GN-015** if asking for a guardianship of the person and/or form **CC-GN-016** if asking for guardianship of the property.

You must also serve interested persons with a **Notice to Interested Persons**. Use form **CC-GN-005** if asking for a guardianship of the person and/or form **CC-GN-006** if asking for a guardianship of the property.

**STEP 4. File proof of service with the court** – File proof that all necessary people have been properly served with the required papers. If you were unable to contact, locate, or identify any interested person, complete and sign an **Affidavit of Attempts to Contact, Locate, and Identify Interested Persons (CC-GN-010)** and file it with the court.

For information about service, see **General Instructions** (CC-DRIN) and the Self-Help Video, “Service of Process” available at: <http://www.mdcourts.gov/video/selfhelp/serviceofprocess.html>.

**STEP 5. Appointment of an Attorney** - After the court receives a petition for guardianship, it will appoint a lawyer to represent the alleged disabled person if they do not already have one of their own choosing.

**STEP 6. Hearing** – The court will schedule a hearing for guardianship of the person cases, after it receives

- the petition,
- proof that all required people were properly served, AND
- notice that the alleged disabled person has an attorney.

For guardianship of the property cases, if no one responds to the show cause order (i.e., challenges the need for guardianship or who should be appointed), the court may rule on the petition without holding a hearing. If any interested person objects to the petition, the court will schedule a hearing and notify all parties.

A hearing helps the court decide if the alleged disabled person needs a guardian and, if so, who should be appointed. It is important that you attend the hearing and bring all papers related to the case. If the alleged disabled person or an interested person contests (challenges) your request for guardianship, contact a lawyer before the hearing.

### **WHO CAN BE A GUARDIAN?**

The court may appoint anyone who is qualified and capable of fulfilling the responsibilities of a guardian. Maryland law provides a list of potential guardians in order of preference (Md. Code Ann., Est. & Trusts § 13-707).

If you have been convicted of certain crimes, you may not be eligible to become a guardian. Unless good cause is shown for the appointment, the court may not appoint someone who has been convicted of any of the following crimes listed under Md. Code Ann., Estates and Trusts, Article § 11-114:

- A felony
- A crime of violence as defined in § 14-101 of the Criminal Law Article, which include:
  - Abduction;
  - arson in the first degree;
  - kidnapping;
  - manslaughter, except involuntary manslaughter;
  - mayhem;
  - maiming, as previously proscribed under former Article 27, §§ 385 and 386 of the Maryland Code;

- murder;
  - rape;
  - robbery under § 3-402 of the Criminal Law Article;
  - carjacking;
  - armed carjacking;
  - sexual offense in the first degree;
  - sexual offense in the second degree;
  - use of a handgun in the commission of a felony or other crime of violence;
  - child abuse in the first degree under § 3-601 of the Criminal Law Article;
  - sexual abuse of a minor under § 3-602 of the Criminal Law Article if:
    - the victim is under the age of 13 years and the offender is an adult at the time of the offense; and
    - the offense involved:
      - vaginal intercourse, as defined in § 3-301 of the Criminal Law Article;
      - a sexual act, as defined in § 3-301 of the Criminal Law Article;
      - an act in which a part of the offender's body penetrates, however slightly, into the victim's genital opening or anus; or
      - the intentional touching, not through the clothing, of the victim's or the offender's genital, anal, or other intimate area for sexual arousal, gratification, or abuse.
  - an attempt to commit any of the crimes listed above;
  - continuing course of conduct with a child under § 3-315 of the Criminal Law Article;
  - assault in the first degree;
  - assault with intent to murder;
  - assault with intent to rape;
  - assault with intent to rob;
  - assault with intent to commit a sexual offense in the first degree; and
  - assault with intent to commit a sexual offense in the second degree.
- Assault in the second degree; or
  - A sexual offense in the third or fourth degree or attempted rape or sexual offense in the third or fourth degree.

Other convictions may prevent you from becoming a guardian of the property. Unless good cause is shown for the appointment, the court may not appoint someone as a guardian of the property who has been convicted of a crime that reflects negatively on that person's honesty, trustworthiness, or fitness to perform the guardianship duties. Those crimes include fraud, extortion, embezzlement, forgery, perjury, and theft.

If the proposed guardian has been convicted of a disqualifying crime, **there will be an opportunity to explain to the court why there is good cause for the court to still make the appointment.**

## **WHAT ARE THE GUARDIAN ORIENTATION AND TRAINING REQUIREMENTS?**

Before the court appoints you as a guardian of the person or property, you must watch the orientation program for court-appointed guardians available at <https://mdcourts.gov/family/guardianship/guardianorientationprogram>. This brief video covers the role, duties, and responsibilities, of a guardian and what to expect if appointed. If you do not have access to a computer or need help watching the program, contact the court.

After watching the video, complete a Certificate of Completion – Guardian Orientation and Training Program (CC-GN-031) and file it with the court.

After the court appoints you as guardian, it will direct you to complete a training program. The program covers your specific responsibilities as guardian in more detail, describes how to make decisions as a guardian, and provides information about community resources available to help you and the person you care for. Guardians of the person must complete the training within 120 days of appointment. Guardians of the property must complete the training within 60 days of appointment. The court may direct you to complete the training at another time.

Some courts offer the training program as a class you can attend. Some may allow you to complete the training program online. Ask the court how you can meet the training requirement.

Visit [www.mdcourts.gov/guardianship](http://www.mdcourts.gov/guardianship) for more information about the court-appointed guardian orientation and training programs. This website also has checklists, court forms, and other resources for guardians.