IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

Register in Chancery	Register in Chancery	Register in Chancery
Kent County	New Castle County	Sussex County
38 The Green, Ste. 208	500 N. King Street, 7th Floor	34 The Circle
Dover, DE 19901	Wilmington, DE 19801	Georgetown, DE 19947
302-735-1930	302-255-0544	302-856-5777

Procedures for filing a Petition to Determine Capacity

- The petition must be filled out by the petitioner, the court clerk cannot complete the petition.
  - The petitioner will need to have their signature notarized on several forms. If you appear in the Register's Office with identification and the correct paperwork, your signature can be notarized by a court clerk in the Register's Office.
  - The petitioner must file this petition in the county in which the person whose capacity is in dispute resides or is located.
  - The contested determination of incapacity under 16 Del. C. Section 2504(b) must be attached to the petition. The determination of incapacity must have been made by a physician, psychologist, physician assistant, advanced practice registered nurse, licensed clinical social worker, or other responsible health-care professional under Section 2504(b)(1). Even if within the above list, the determination may not be made by a family member, cohabitant, or surrogate of the person whose capacity is in dispute.
  - The person whose capacity is in dispute must have been found under 16 Del. C. Section 2504(b) to lack capacity within the last three (3) months.

- The filing fee for the petition is **$135.00 plus $2.00 per page scanning fee**. Payment must be received at the time of filing, or the petition will not be accepted by our office. We accept **cash, check or money order** (made payable to the "Register in Chancery"). If the Register in Chancery's office makes photocopies for you, we will charge a $1.50 per page fee.

- The Court will appoint an attorney to represent the best interests of the person whose capacity is in dispute. The attorney does not represent the petitioner. The Court will award the attorney *ad litem* a reasonable fee for their work on behalf of the person whose capacity is in dispute. The petitioner is responsible for paying the attorney's fee unless a Judicial Officer determines otherwise. For contested petitions, those that require out of state travel or further investigation, the fee may exceed $750.00.

- The petitioner is responsible for obtaining consents from the interested parties or sending notice of the petition to the interested parties. Please see the instruction sheet within this packet for additional information.

- A petition to determine capacity may only be filed if the individual is found to lack capacity under 16 Del. C. Section 2504(b) and the petitioning party has determined that the protections already in place (e.g., an advance health care directive, power of attorney, or supportive decision making arrangement) negate the likelihood that the last resort of a guardianship should be necessary.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF:	:	
	:	
_____,	:	C.M. # _____
A Subject Person	:	

Petition to Determine Capacity

1. Information about the petitioner(s):
   a. Name(s): _____
   b. Current address(es): _____

      _____

      _____
   c. Telephone Number(s): _____
   d. Relationship(s) to person whose capacity is in dispute (the "Subject Person"):

      _____
   e. Do you require an interpreter? ☐ Yes ☐ No. If yes, what language?

      _____
2. Information about the Subject Person:
   a. Age: _____
   b. Date of birth: _____
   c. Current address: _____

      _____
   d. Permanent address: _____

      _____
   e. Is the Subject Person a patient at a hospital, living in an institution or living in a group home?

      ☐ No

      ☐ Yes. If "Yes", answer the following questions:

i. Name of facility: _____

ii. Admission date: _____

iii. Reason(s) for admission: _____

_____

_____

f. Does the Subject Person require an interpreter? ☐ Yes ☐ No.

If yes, what language? _____

3. Interested parties

a. Has the Subject Person ever appointed an Agent through a Power of Attorney or Advance Health Care Directive?

☐ No

☐ Yes. If "Yes", name, address and phone number of the Agent: _____

_____

_____

b. Has the Subject Person been represented by a Delaware attorney within the last two years?

☐ No

☐ Yes. If "Yes", include the name of the attorney, explain the reason and include the years of service: _____

_____

c. Has someone been primarily responsible in the past six (6) months for providing care or handling the finances for the Subject Person?

☐ No

☐ Yes. If "Yes", provide their name, address, and phone number: _____

_____

d. The names and contact information of the next of kin, including anyone who

would be entitled to inherit through the estate of the Subject Person if that person died without a will, a named fiduciary, executor, or beneficiary. If an interested party is a minor, please provide the name and contact information for the minor's parent or other guardian as the parent or guardian will require notice.

Name of interested party	**Relationship to Subject Person**	**Address, phone number, and email address of interested party**	**Age**

Please attach a separate sheet of paper if additional space is needed.

4. Who is paying the expenses of the Subject Person and out of what funds?

_____

5. The marital status of the Subject Person is: (check one)

☐ Single ☐ Married ☐ Divorced ☐ Widowed

6. Has the Subject Person ever executed a Will?

☐ No

☐ Yes. If "Yes", the Will is located at the following address: _____

_____ and is in the custody of the following person/entity: _____.

7. Has the Subject Person ever been a member of the military? ☐ Yes ☐ No

8. The Subject Person was determined to lack capacity by (insert name) _____ on (insert date of determination) _____. Please attach a copy of the determination.

9. Explain in detail why the above determination is contested and by whom.

_____

_____

_____

Please attach a separate sheet of paper if additional space is needed.

10. All the following statements must be true before the Court of Chancery will consider this petition. Check the following statements to acknowledge they are true:

a. ☐There is currently no guardian for the person or property of the Subject Person.

b. ☐There is a live dispute regarding a determination that the Subject Person lacks capacity.

c. ☐The Subject Person has lived in the State of Delaware for at least the last six (6) months.

d. The Subject Person is a resident of or currently located in

☐ New Castle County

☐ Kent County

☐ Sussex County

e. ☐Attached is the determination of lack of capacity.

f. ☐ There are protections already in place (e.g., an advance health care directive, power of attorney, or supportive decision making arrangement) and I/We do not anticipate requesting the last resort of a guardianship.

g. ☐I/We understand the following about the court appointed attorney *ad litem*: (1) the Court will appoint an attorney to represent the best interests of the

Subject Person; (2) the Court will award the attorney *ad litem* a reasonable fee for his/her work on behalf of the Subject Person; (3) I/We as the petitioner(s) am/are responsible for paying the attorney's fee although the Judicial Officer may determine otherwise; and (4) for uncontested matters, the fee can be up to $750.00 and for extraordinary cases such as contested petitions, those that require out of state travel or further investigation, the fee may exceed $750.00.

WHEREFORE, Petitioner(s) respectfully request that:

1. This Court determine the capacity of the Subject Person.

2. A preliminary order be entered to appoint an attorney *ad litem*, schedule a hearing and to notify interested parties.

_____	_____
Signature of Petitioner	Signature of Co-Petitioner
_____	_____
Address	Address
_____	_____
_____	_____
Phone number	Phone number

STATE OF _____:

COUNTY OF _____:

This instrument was acknowledged before me on this _____ day of _____, 20_____ by _____ [Name of affiant].

_____

Notary Public/Chancery Court Clerk

Instructions for Notifying Interested Parties of Petition to Determine Capacity

It is the petitioner's responsibility to notify the interested parties when a petition to determine capacity is filed with the Court. This includes notifying all the parties you listed on number three (3) of the petition.

Each interested party may sign and have notarized a copy of the attached "Waiver of Notice and Consent." The petitioner will be required to send notice to anyone who does not sign a consent. Additional information will be provided to the petitioner after the order is signed appointing the attorney for the Subject Person and scheduling the hearing.

If you do not know the address for an interested party, you must make every attempt to locate the address and file the enclosed affidavit of efforts to locate address of interested party with your petition.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

In the matter of:	:	
	:	
_____,	:	C.M. #: _____
A Subject Person	:	

Waiver of Notice and Consent

I, _____, whose relationship to the person whose capacity is in dispute is that of _____ (*e.g.* mother, brother), hereby waive my right to notice of the hearing and to be heard and participate in the Court's determination of capacity.

Signature: _____

Address: _____

Phone Number: _____

STATE OF _____ :

COUNTY OF _____:

This instrument was acknowledged before me on this _____ day of _____, 20_____ by _____ [Name of affiant].

_____

Notary Public/Chancery Court Clerk

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

In the matter of:	:	
	:	
_____,	:	C.M. #: _____
A person with a disability	:	

Affidavit of Efforts to Locate Address of Interested Party

1. Name of guardian(s): _____

2. Name of interested party or missing person whose address cannot be located:

_____

3. My/our last contact with the interested party was on or around

_____ [month/year].

4. To the best of my/our knowledge, the last contact he/she had with the person with a disability was on or around _____ [month/year].

5. I/We have been unable, after exercising reasonable diligence, to locate an address for the interested party to provide that interested party with notice of the filing of the petition.

6. My/Our efforts have included the following [please check all that apply]:

☐ performing an internet search for the address of the interested party;

☐ asking other interested parties if they know of the missing person's current whereabouts;

☐ messaging the missing person through electronic means;

☐ Other: _____

_____

If I/We subsequently locate the missing interested party, I/We will notify the Court of his/her address.

Pursuant to Court of Chancery Rule 178B, the notary requirement is waived.

Signature section for guardian	Signature section for any co-guardian
I declare under penalty of perjury under the laws of Delaware that the foregoing is true and correct. Date: _____ Print name: _____ Signature: _____	I declare under penalty of perjury under the laws of Delaware that the foregoing is true and correct. Date: _____ Print name: _____ Signature: _____