

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

Register in Chancery
Kent County
38 The Green, Ste. 208
Dover, DE 19901
302-735-1930

Register in Chancery
New Castle County
500 N. King St., Ste. 11600
Wilmington, DE 19801
302-255-0544

Register in Chancery
Sussex County
34 The Circle
Georgetown, DE 19947
302-856-5775

Procedures for filing a Petition for the Appointment of Guardian(s) of the Person of a Person with an Alleged Disability

- The petition must be filled out completely.
 - The court clerk cannot complete the petition for you.
 - The petitioner(s) will need to have their signature(s) notarized on the petition, personal information sheet and affidavit of proposed guardian's history. If you appear in the Register's Office with identification and the correct paperwork, your signature(s) can be notarized by a court clerk in the Register's Office.
 - A detailed physician's affidavit must be attached to the petition. The physician's affidavit must be notarized.

- 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 with an alleged disability. The attorney does not represent the petitioner(s). The Court will award the attorney *ad litem* a reasonable fee for their work on behalf of the person with an alleged disability. The petitioner is responsible for paying the attorney's fee. For uncontested matters, the fee can be up to \$750.00. Extraordinary cases such as contested petitions or those that require out of state travel or further investigation may exceed \$750.00.

- The petitioner(s) is/are responsible for obtaining consents from the interested parties or sending notice of the petition to the interested parties by certified mail. Please see the instruction sheet within this packet for additional information.

- A petition for guardianship should only be filed as a last resort. Information can be found online on the following alternatives:
 - Advance Health Care Directive <https://www.dhss.delaware.gov/dsaapd/advance1.html>
 - Durable Power of Attorney <https://www.dhss.delaware.gov/dhss/dhcq/poa.html>
 - Surrogate Decision Making <https://delcode.delaware.gov/title16/c025/index.shtml>
 - Supported Decision Making https://www.dhss.delaware.gov/dhss/dsaapd/supported_decision_making.html

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Guardianship Volunteer Program

The Court of Chancery utilizes a volunteer program designed to monitor individuals who have been placed under guardianship and whose care is the responsibility of court-appointed guardians. This important monitoring function is coordinated by the Guardianship Monitoring Program of the Office of the Public Guardian, and enables the Court to receive first-hand information about people for whom the Court has ultimate responsibility. The volunteer, designated by the Office of the Public Guardian, is assigned a case, given necessary information about the case, and makes an appointment to meet with the guardian and person with a disability. After the visit, the volunteer fills out a report indicating the status of the person with a disability and may make recommendations for action. The volunteer's report is filed by the Office of the Public Guardian and subsequently viewed by Court staff to determine if further action is necessary. The volunteer is considered an extension of the Office of the Public Guardian and the Court and should be treated accordingly.

Persons subject to guardianship are very important and they deserve every right and protection available. You should expect to be contacted in the future by a volunteer and your cooperation with scheduling meeting times with the volunteer is greatly appreciated. Thank you in advance for your time and effort.

Sincerely,
Sherri Hageman, M.S., Guardianship Advocacy Director
Office of the Public Guardian
(302) 255-1901 or (302) 358-0782

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF: _____ :
 :
 : C.M. # _____
A person with an alleged disability :

PETITION TO APPOINT GUARDIAN(S) OF THE PERSON

1. Information about the person(s) who wish(es) to be appointed guardian(s):
 - a. Name(s): _____
 - b. Current address(es): _____

 - c. Telephone Number(s): _____
 - d. Relationship(s) to person with an alleged disability: _____
2. Information about the person with an alleged disability:
 - a. Age: _____
 - b. Date of birth: _____
 - c. Current address: _____

 - d. Permanent address: _____

3. Interested parties
 - a. Has the person with an alleged disability 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 person with an alleged disability 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. Is the person with an alleged disability 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. Admitted by: _____

iv. Reason(s) for admission: _____

v. Name and address of administrator, house manager or other appropriate individual to contact at the hospital, facility or group home: _____

d. Has someone been primarily responsible in the past six (6) months for providing care or handling the finances for the person with an alleged disability?

No

Yes. If “Yes”, provide their name, address and phone number: _____

- e. The names and contact information of the next of kin, including anyone who would be entitled to inherit through the estate of the person with a disability 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 person with an alleged disability	Address and phone number of interested party	Age

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

4. Who is paying the expenses of the person with the alleged disability and out of what funds? _____

5. The marital status of the person with an alleged disability is: (check one)

- Single Married Divorced Widowed

6. Has the person with an alleged disability 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 person with an alleged disability ever been a member of the military?

Yes No

8. Are there areas of decision-making that you think the person with an alleged disability can continue to make? Yes No

If "Yes", please explain what areas: _____

9. A list of the believed assets and estimated value are the following: _____

10. A list of the believed current sources of income are the following (*e.g.* Social Security, Pension): _____

11. A list of the believed current sources of liabilities are listed as the following (*e.g.* living expenses, healthcare, medical expenses, other debts): _____

12. Explain in detail why the person with an alleged disability is in need of a guardian. _____

13. Explain in detail why you should be appointed guardian(s). _____

14. In your opinion, will notifying the person with an alleged disability that this petition is being filed likely result in harm to them?

No

Yes. If "Yes, please explain why. _____

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

- a. There is currently no guardian for the person of the person with an alleged disability.
- b. The person with an alleged disability is unable to properly manage and care for his/her person and, as a consequence therefore, is in danger of becoming the victim of a designing person. He/she is in danger of substantially endangering his/her own health or becoming subject to abuse by other persons.
- c. The person with an alleged disability has lived in the State of Delaware for at least the last six (6) months.
- d. Attached is the notarized physician's affidavit.
- e. I/We consent to the Register in Chancery of the Court being my/our agent for acceptance of service as to any claim arising out of the guardianship if, by reason of the guardian's absence(s) from this State, I/We cannot be personally served.

WHEREFORE, Petitioner(s) respectfully request that:

1. This Court appoint him/her/them as guardian(s) of the person of the person with an alleged disability.

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

PHYSICIAN'S AFFIDAVIT

NOTE: This affidavit will be used in a legal proceeding to appoint a guardian for the patient named below. Detailed information is necessary for the court to assess whether the patient has a disability under Delaware law. A person with a disability is defined under Delaware law as someone who “[b]y reason of mental or physical incapacity is unable properly to manage or care for their own person or property, or both, and, in consequence thereof, is in danger of dissipating or losing such property or of becoming the victim of designing persons or, in the case where a guardian of the person is sought, such person is in danger of substantially endangering person’s own health, or of becoming subject to abuse by other persons or of becoming the victim of designing persons[.]” 12 Del. C. § 3901(a)(2). The information in this affidavit must be specific and detailed and based on your personal examination of the patient. Sample forms are available on the court’s website at <https://courts.delaware.gov/forms/>. Thank you for your concern and cooperation.

IS THIS AN EMERGENCY GUARDIANSHIP PETITION? If an *emergency* appointment of guardian is needed, please complete page four (4) of this form *in addition* to pages one (1) through three (3).

PATIENT’S NAME: _____

ADDRESS: _____

DATE OF BIRTH: _____

I, _____, (check one) M.D., D.O., Ph.D., Psy.D., of full age, hereby certify as follows:

I am duly licensed and accredited in the following areas of medical practice:

The history of my involvement with this patient is the following: (check the appropriate box(es) and add further clarification on the blank lines)

10+ years 5-10 years 1-5 years Less than 1 year First visit

The patient’s diagnoses related to their incapacity include:

- 1. _____ Mild Moderate Severe N/A
- 2. _____ Mild Moderate Severe N/A
- 3. _____ Mild Moderate Severe N/A

Patient Name: _____

I personally examined this patient on _____, 20_____.

The examination lasted approximately _____
(Time)

Relevant tests and results related to their incapacity:

Does the patient have difficulty communicating? If so, describe the difficulty in detail, and provide the cause of the patient's difficulty with communication:

Based on tests and my examination of this patient, it is my professional opinion that she/he:

does not have

does have

a disability that significantly interferes with the ability to make responsible decisions regarding health care, food, clothing, shelter, or finances.

(Optional) The following documents are attached as supporting information regarding the particulars of the disability:

Describe the patient's disability:

The disability impairs the patient's ability to perform the following functions and activities:

In my opinion, the patient

does have

does not have

sufficient mental capacity to understand the nature of guardianship in order to consent to the appointment of a guardian.

Patient Name: _____

The patient is or is not able to perform the following functions independently:

Activities of daily living	<input type="checkbox"/> Is able	<input type="checkbox"/> Is not able
Pay his/her own bills	<input type="checkbox"/> Is able	<input type="checkbox"/> Is not able
Live alone	<input type="checkbox"/> Is able	<input type="checkbox"/> Is not able
Take medication appropriately	<input type="checkbox"/> Is able	<input type="checkbox"/> Is not able
Give informed consent for medical procedures	<input type="checkbox"/> Is able	<input type="checkbox"/> Is not able
Resist scams	<input type="checkbox"/> Is able	<input type="checkbox"/> Is not able

I solemnly swear and affirm under the penalties of perjury and upon personal knowledge that the contents of this affidavit are true.

Date

Physician's Signature

Printed Name

Physician's Address: _____

Physician's Phone Number: _____

STATE OF _____:

COUNTY OF _____:

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

Notary Public

Patient Name: _____

TO BE COMPLETED WHEN REQUESTING AN EMERGENCY GUARDIANSHIP

Nature of the emergency, such as medical, abuse, neglect, exploitation, etc.:

If this is a medical emergency, provide the diagnosis:

Describe the testing or treatment related to the diagnosis that is urgently needed and cannot be accomplished without imposition of a guardianship and why it is urgently needed within the next 72 hours:

Date

Physician's Signature

Printed Name

STATE OF _____:

COUNTY OF _____:

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

Notary Public

**COURT OF CHANCERY
PERSONAL INFORMATION SHEET**

Please Note: If there is more than one proposed guardian, each person will need to complete a separate form and use separate contacts on page two of this form.

In the matter of: _____, a person with an alleged disability/minor

Social Security Number: _____ Date of Birth: _____

Date this form is completed: _____

In connection with the above matter, I have applied to the Court of Chancery to be appointed as guardian of the person with an alleged disability/minor named above. I understand that I must complete this form in full or my guardianship petition may be denied. In order to provide the Court with sufficient information to determine my qualification to serve as guardian and to assist the Court in assuring that the Court's staff will always be able to locate and make contact with me, the following information and consent is given:

Proposed Guardian's current full name: _____

Proposed Guardian's physical address: _____

Proposed Guardian's mailing address (if different): _____

Home phone number: _____ Work phone number: _____

Cell phone number: _____ E-mail address: _____

Date of birth: _____ Social Security number: _____

Driver's License number and State: _____

Place of employment and address: _____

Name of supervisor and telephone number: _____

Name/Address/Telephone number of spouse (if not a co-petitioner/co-guardian):

Contacts: List the information for two people who should always be able to locate or contact you and do not live at the same address as each other or the petitioner(s). If there is more than one proposed guardian, separate contacts must be listed.

1. Name: _____

Address: _____

Phone number: _____ Relationship: _____

2. Name: _____

Address: _____

Phone number: _____ Relationship: _____

I fully understand that it is my duty to keep the Court informed of my whereabouts and to provide the Court with any change in my name, physical address or mailing address. I hereby authorize the staff of this Court to contact any of the persons named above and authorize and direct any of the persons named above and my attorney(s) to provide to the Court any information which might assist the Court in locating or contacting me in the future. I also authorize the court staff to search government or public databases to locate me. I further agree that any federal, state, public, or private agency with information about my whereabouts, or the whereabouts of the person with an alleged disability or minor named above, may release that information to the Court and its staff, and I authorize and direct such persons to release that information. I release the Court and the Court's staff from all liability associated with efforts to determine my whereabouts or the whereabouts of the person with an alleged disability or minor over whom guardianship has been established.

Proposed Guardian's signature

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

A person with an alleged disability/Minor: _____

AFFIDAVIT OF PROPOSED GUARDIAN’S HISTORY

Please Note: If there is more than one proposed guardian, each person will need to complete a separate form.

Proposed Guardian’s Name: _____

1. Have you ever declared bankruptcy? Yes No

If so, when? _____

If so, what type? _____

2. Have you ever been convicted of a misdemeanor? Yes No

If so, describe which misdemeanor, when and in what jurisdiction you were convicted (e.g. State, County and Police Department). _____

3. Have you ever been convicted of a felony? Yes No

If so, describe which felony, when and in what jurisdiction you were convicted (e.g. State, County and Police Department). _____

4. I give the State of Delaware permission to conduct a criminal background check on me at any time during the consideration of my petition for guardianship and, if granted, at any time during the period I am guardian. I solemnly swear and affirm under penalty of law that the statements and answers above are true to the best of my knowledge.

STATE OF _____ :

COUNTY OF _____:

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

Notary Public/Chancery Court Clerk

Proposed guardian’s signature

**INSTRUCTIONS FOR NOTIFYING INTERESTED PARTY(IES) OF
PETITION FOR GUARDIANSHIP**

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

Each interested party may sign and have notarized a copy of the attached "Waiver of Notice and Consent." The petitioner(s) will be required to send notice to anyone who does not sign a consent. Additional information will be provided to the petitioner(s) after the order is signed appointing the attorney for the person with an alleged disability 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 person with an alleged disability :

WAIVER OF NOTICE AND CONSENT

I, _____, whose relationship to the person with an alleged disability is that of _____ (e.g. mother, brother), hereby waive my right to notice of the hearing and hereby consent to the appointment of _____ as guardian(s) of the person (to make his/her medical decision) without further notice.

Interested Party's 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

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.

Petitioner

Co-Petitioner

STATE OF _____ :

COUNTY OF _____:

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

Notary Public/Chancery Court Clerk