

INSTRUCTIONS: HOW TO ASK THE COURT TO APPOINT A GUARDIAN FOR AN ADULT

Introduction

Appointing a guardian for a person is a serious matter. It takes away the person's freedom to make important decisions about their own life. Appointing a guardian should not be done unless there is no other reasonable alternative to keep the person safe.

Before you file for guardianship, consider whether less restrictive alternatives to a guardianship are reasonable and available (for example, supported decision-making agreements or powers of attorney), and whether these alternatives are adequate to protect the person. You can read more about these guardianship alternatives at

- <https://health.alaska.gov/gcdse/Pages/projects/SDMA/default.aspx>
- <https://alaskalawhelp.org/resource/power-of-attorney-form>

The petition form will ask you to explain what less restrictive options have been tried and failed (or weren't able to be tried). Before a court can appoint a guardian, the judge must find that guardianship is the least restrictive option for the respondent's situation. As the petitioner, it will be your responsibility to prove to the court that less restrictive options will not work.

These instructions talk about the petition for a guardian (form [PG-100](#)), but most of the information applies to the petition for a conservator (form [PG-104](#)) as well. These instructions apply only to adult guardianships and conservatorships. To file for a minor guardianship, see form packet [PG-600](#), [PG-601](#), or [PG-650](#), depending on your particular situation. The court system does not have forms to help you file for conservatorship of a minor.

Lawyers and Representing Yourself

Before starting this process, it may help to talk to a lawyer who is familiar with guardianship or conservatorship procedure. Many lawyers will do a free or low-cost consultation for a short period of time to help you decide if it is a good idea to have legal help in your case. If you do not know a lawyer, you can call or write:

Lawyer Referral Service of the Alaska Bar Association
P.O. Box 100279
Anchorage, AK 99510-0279
Anchorage Phone: 272-0352
Statewide Phone: 800-770-9999 (toll free within Alaska)

Read more about the guardianship process on the court's self-help website at ak-courts.info/gc. The website contains many links to classes and other resources. If possible, you should watch parts 1 and 2 of the video series on the website before you file the petition and open the case. You should also watch part 3 if you are asking to become the guardian. If you can't watch the videos before you file the case, you should still watch them before the court hearing.

Public court forms are available online at <http://www.courts.alaska.gov/forms/index2.htm>. You can also pick up paper copies of the forms in person at your local court or call and ask to have them mailed to you. Contact information for each court is available at ak-courts.info/dir.

The court has a Guardianship Helpline if you need more help: (907) 264-0520. The helpline is open Monday to Thursday from 8 AM to 5 PM, and Fridays from 8 AM to 12 Noon.

Who Are the People in the Case?

- Incapacitated Person:** A person whose ability to receive and evaluate information or to communicate decisions is impaired. This impairment is so extensive that the person is not able to provide at a basic level for the person's physical health or safety (healthcare, food, shelter, clothing, personal hygiene, and protection) without court-ordered assistance.
- Petitioner:** The person who starts the case and signs the petition asking the court to appoint a guardian.
- Respondent:** The person who is alleged to be incapacitated and to need a guardian.
- Protected Person:** A person who has a guardian or conservator appointed by the court. The "respondent" is called the "protected person" after the judge appoints a guardian or conservator for the person.
- Ward:** Another term (or synonym) for "protected person" that you might see on some forms or websites. "Ward" is considered a less modern term for adults with guardians, but is still currently used in the Alaska statutes to describe persons under guardianship.

How to File

- Step 1. Fill out the appropriate petition form.

To ask the court to appoint a **guardian for an adult**, fill out *Petition for Appointment of a Guardian for an Adult* (form [PG-100](#)). Use this form to ask for either a full or a partial guardian. A partial guardian makes decisions on limited issues like housing, medical care, employment, or schooling. In a full guardianship, the guardian makes decisions on almost all significant issues in the protected person's life. You will have to explain why the respondent needs a guardian in each area where you are asking the guardian to have decision-making authority. The instructions for the guardianship petition begin on page 7 of these instructions.

To ask the court to appoint a **conservator for an adult**, fill out *Petition for Appointment of a Conservator for an Adult* (form [PG-104](#)). A conservator makes decisions about the protected person's financial affairs (money and property), but not other areas of the person's life. A conservator could be appointed because a person is incapacitated (the same standard as what is required for a guardian), but there are also other reasons that a conservator could be needed. For example, when the protected person has a physical or legal barrier preventing access to bank accounts or important documents (see [AS 13.26.401](#)). The court process for appointing a conservator is similar to appointing a guardian.

If this is an **emergency**, fill out *Emergency Petition for Appointment of a Temporary Guardian* (form [PG-101](#)) and attach it to the regular petition. Instructions for the emergency petition are in form [PG-525](#). A situation qualifies as an emergency only if the respondent needs **immediate** services to protect them against **serious injury, illness, or disease**, and the respondent is too incapacitated to get the necessary services on their own. The temporary guardian is only authorized to get those specific emergency services and the guardianship only lasts until the emergency is over. If your situation does not qualify under this legal definition of emergency, you can still ask the court to hear the petition more quickly by filing *Motion for Hearing on Shortened Time under Probate Rule 14.1* (form [PG-108](#)). You must explain why the court should expedite your case and not follow the normal timeline.

Step 2. Make a copy of the petition for yourself.

Step 3. File the petition.

File the original, notarized petition at the superior court location nearest to where the respondent lives¹ (a list of court locations that accept guardianship petitions is on form [CIV-127](#)) and pay the filing fee according to [Administrative Rule 9](#) (a list of current fees is online at ak-courts.info/courtfees). You can bring the petition to the court in person or mail it along with the filing fee. If you can't afford the fee, file *Request for Exemption from Payment of Fees* (form [TF-920](#)) with your petition.

If you change your address, email, or phone number at any time after you file the petition, you must tell the court in writing. Use *Notice of Change of Contact Information* (form [PG-195](#)).

Step 4. Appointment of Lawyer, Visitor, and Expert.

The court clerk will send you an *Order for Guardian Appointments, Hearing Notice, and Release of Records*. In this order, the court will schedule a hearing on your petition and appoint a person to perform each of the following three duties:

- a. **Lawyer for the Respondent.** The respondent has a right to be represented by a lawyer in the guardianship case. If the respondent can't afford a lawyer, the court must appoint the Office of Public Advocacy (OPA) to represent them.
- b. **Court Visitor.** You will not know the name of the specific court visitor or their contact information until they are assigned by the court visitor administrator. This assignment usually happens several days after the initial appointment order and will be sent in a separate notice to you. The court visitor is a neutral person contracted by the court to arrange for necessary evaluations of the respondent and to gather relevant medical, financial, or other records about the respondent. The visitor will also interview the respondent, you (the petitioner), anyone who asks to be appointed as guardian, and other people who know about the respondent's abilities. After completing these tasks, the visitor will file a written report for the court about the respondent's situation that includes recommendations about what arrangement is in the respondent's best interests. The court will carefully consider the information in the court visitor's report, but is not required to follow the visitor's recommendations.
- c. **Expert.** The court expert is a person who has expertise in the area of the respondent's alleged incapacity. It is usually a medical doctor, psychologist, or other healthcare professional. In some cases, the court may appoint a person who already has a relationship with the respondent or has already done evaluations of the respondent. In other cases, the expert will evaluate (or re-evaluate) the respondent after the court appointment, and the results will be passed on to the court in the visitor's report. The court may wait to appoint an expert until there is more information from the court visitor's investigation.

¹ If the respondent has been ordered by the court to an institution (for example, a mental health commitment), you can also file the petition in the same court that issued that order.

Step 5. Notify Others about the Court Hearing.

As the petitioner, it is your responsibility to notify other people about the hearing. **If you do not do the required notification, your case could be delayed or dismissed (closed).** Once you receive the order in Step 4, do the following as soon as possible:

- a. On page 1 of the *Notice of Guardianship Hearing* (form [PG-115](#)), fill in the date, time, and place of the hearing, and the name of the judge or master who will be holding the hearing. This information will be on the notice that the clerk sent you in Step 4.
- b. On page 3 of form PG-115, write the names of all the listed relatives of the respondent that you can locate. Also, write the names of these other persons:
 - the respondent’s conservator (if the respondent has one),
 - the person you nominated to be the guardian (if not yourself),
 - the person who currently has care and custody of the respondent (if any),
 - the respondent’s attorney (ask the court for the name and address),
 - the respondent’s guardian ad litem² (if the court appointed one),
 - any other person that the court has ordered you to give notice to, and
 - any other “interested person” (for example: anyone the respondent owes money to, anyone who has a “power of attorney” for the respondent, the “representative payee” for the respondent’s social security benefits, the trustee of any trust the respondent is associated with, etc.).³

Check the boxes showing how the notice will be delivered to each person.

- c. Make copies of the completed form PG-115 and send the copies to all the people you listed on page 3. You must do this at least 14 days before the hearing.
 - (1) If the respondent’s **spouse or parents are in Alaska**, you have to send their copy of form PG-115 by either certified mail with restricted delivery or by process server. See the booklet *How to Serve a Summons in a Civil Lawsuit* (form [CIV-106](#)) for instructions on both of these methods. For any **spouse or parent outside Alaska**, you can send them form PG-115 by regular first-class mail instead.
 - (2) You can send form PG-115 to everyone else by either regular first-class mail or hand-delivery by you or any other adult. If you use hand-delivery, list who did the delivery.
- d. After you send or give form PG-115 to everyone on page 3, you must file proof with the court that you did this.
 - (1) Make a copy of the completed and signed form PG-115 for your records and **file the original with the court**. This is your proof of service for all notices you hand-delivered or sent by regular mail.
 - (2) If you used a **process server**, the process server will give you a "Return of Service" that lists the documents delivered, who they were delivered to, and when they were delivered. File this **original** "Return of Service" with the court. Keep a copy for yourself.

² A “guardian ad litem” (often referred to as a “GAL”) is a person appointed by the court to protect the rights of the respondent during the guardianship proceedings. AS 13.26.041. See paragraph “f” on page 2 of form [PG-115](#) for an explanation of when the court will appoint a GAL and the role this person plays.

³ See the definition of “interested person” in [AS 13.06.050\(26\)](#).

- (3) If you used **certified mail**, fill out *Certificate of Service by Certified Mail* (form [PG-117](#)). Fill out a separate form PG-117 for each person you served by certified mail. Attach the original green card you got back from the Post Office, showing that the certified mail was delivered to the person you sent it to. File the **original** form PG-117 (with green card attached) at the court. Keep a copy of each form PG-117 for yourself.

Step 6. Visitor's Investigation and Expert's Report.

Within 90 days after the petition is filed (unless the court orders a different deadline), the visitor must file a report with the court and give a copy of it to the respondent, to the respondent's attorney, and to you (the petitioner). To prepare this report, the visitor will investigate the respondent's current situation, including the respondent's living arrangements, medical and mental health diagnoses and treatment, employment and schooling (if any), and financial resources.

The visitor must give a copy of your petition to the respondent and explain what it means. The visitor will tell the respondent about their rights, including the right to talk to a lawyer and to an expert in the field of the respondent's alleged incapacity before answering any of the visitor's questions. The visitor will tell the respondent how to contact the court-appointed lawyer and must help the respondent make contact if the respondent asks for help.

The visitor will then ask the respondent questions to determine the type of help the respondent needs and the respondent's ability to take care of these needs. The visitor will also interview people who can provide other information needed for the visitor's report.

The visitor will attach any report by the court-appointed expert to the visitor's report. The visitor will be available to testify at the court hearing, answer any questions about their report, and explain any parts of their report that the judge or the parties want to know more about. Remember that the visitor is a neutral party, appointed to help the judge get more information about the respondent. The visitor is not there to advocate on behalf of either you or the respondent, to take sides in a dispute, or to help either party call witnesses or present evidence.

Step 7. Response to the Visitor's Report.

When you receive the visitor's report, you have 10 days to file a written response to it if you want to. You can ask the court for more time, but you must explain why you need the extra time (use form [PG-920](#) to ask for more time). The respondent can also file a response within that 10-day time period. The court does not currently have forms for filing a response to the visitor's report, so if you choose to file one, you must create your own document that includes:

- a. A "case caption" (top of form) like the one on other court forms (including the name and location of the court, the name of the case, and the case number). The title of your document should be "Petitioner's Response to Visitor's Report."
- b. The date of the visitor's report.
- c. The paragraph number of each section of the visitor's report that you want to comment on and your comments on that section.
- d. Your signature, printed or typed name, address, email, and phone number.

- e. A certification that you sent a copy of your response to the respondent's attorney, the court visitor, and any other interested parties. For example:

I certify on ___(date)___, I mailed a copy of this response to:

Respondent's Attorney: _____

Court Visitor: _____

Others: _____

_____ (your signature)

Step 8. Court Hearing.

The hearing must happen within 120 days after you file your petition unless the court postpones the hearing for cause. For example, the court might need to postpone the hearing if additional medical examinations for the respondent are needed.

The respondent has the right to be present at the hearing. Usually, these hearings are closed to the public, but the respondent can choose to have it open to the public. Usually, the hearing is before a judge or master alone, but the respondent can choose a jury (instead of a judge) to decide the issue of whether the respondent is incapacitated.

The respondent has the right to present evidence and to ask questions of any witness. The respondent can remain silent (and not answer any questions) if the respondent wishes to. If the judge decides to appoint a guardian, the judge is required to consult with the respondent as much as possible on who the guardian should be and other details of the guardianship.

As the petitioner, you must prove by clear and convincing evidence that

(1) the respondent is an "incapacitated person" (as defined on page 2 of these instructions),

AND

(2) there are no adequate alternatives to a guardianship.

This means that if there are any disagreements about (1) or (2), it is YOUR responsibility to bring evidence and call witnesses to convince the judge about your position.

You can use evidence that was submitted by others in the case (for example, the visitor's report), but do not assume that other parties will prove your case for you.

The hearing will usually happen as follows:

- a. The judge will identify everyone present (for the hearing record).
- b. The judge will ask if there are any additions or corrections to the visitor's report and if there are any objections to it.
- c. The judge will ask everyone whether there are any disagreements about the facts or what should happen in the case (in other words, whether the case is contested). This is so the judge can focus the hearing and evidence on any areas where people don't already agree. For example, whether the respondent is incapacitated, what level of protection is needed, and who the guardian should be (if one is appointed).

- d. In a contested case:
 - (1) You may have to testify under oath or call witnesses to testify in support of your petition.
 - (2) The judge may have to postpone the hearing if it is going to take a long time to hear all the necessary testimony.
 - (3) The judge may order mediation under Probate Rule 4.5. The court's order will provide the details about the mediator and how mediation will be done and paid for.
- e. If the case is not contested, the judge may still need to hear testimony or see other evidence to support the required legal findings, including:
 - (1) the details and diagnosis of the respondent's incapacity, including the respondent's specific needs,
 - (2) whether there are any alternative ways of taking care of the respondent's needs without appointing a guardian, and
 - (3) who should be appointed guardian (considering the priorities for appointment in the Alaska statutes).
- f. If the judge decides a guardian is necessary, the judge must ask the respondent who they want their guardian to be. The judge must give priority to the respondent's choice if the proposed person is willing and appropriate.
- g. If the judge appoints a guardian, the judge will explain that the respondent has the right to request, at a later time, that the guardian be dismissed or that the guardianship order be changed.⁴

How to Fill out the Petition Form

Fill in the top of the form as follows:

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT <u>[Fill in city where court is located]</u>	
In the Matter of the Protective Proceeding of)) <u>[Fill in the respondent's full name]</u>) Respondent (person who needs a guardian)) _____)	CASE NO. <u>[Leave blank for clerk to fill in]</u> <p style="text-align: center;">PETITION FOR APPOINTMENT OF A GUARDIAN FOR AN ADULT</p>

Type or print clearly, using black ink. Do not skip or leave any question blank. If you don't know the information or you believe it is not applicable to the respondent, explain why.

The following is additional information about some sections:

- a. **Introductory Questions 1-7** (pages 1-2). These questions ask about whether there are alternatives to a guardianship that have been tried and failed (or alternatives in place that are not adequate to protect the respondent). These questions also help the court understand if there are already legal restrictions on the respondent's decision-making ability that need to be considered in writing a guardianship order.

⁴ *Petition for Review of Guardianship/Conservatorship* (form [PG-190](#)) can be used by any interested party to file a request to change or end the guardianship or conservatorship. The court will also accept any informal letter or other message from the protected person.

- b. **Section A.4** (page 3). Other Petitions. If there are multiple court cases involving the same respondent, it is important for the judges in each court to talk to each other and make sure that the most appropriate court is hearing the petition, and that no conflicting court orders are issued. **If a guardian has already been appointed in another court, you can't use this form.** You will have to ask the original court that appointed the guardian to change (modify) its order.
- c. **Section A.5** (page 3). Financial Abuse Petition. A petition to protect the respondent from financial abuse can be filed if someone is illegally taking the respondent's money or property, or using the respondent's money or property in a way that does not benefit the respondent. The forms for asking for protection from this type of abuse are [PG-800](#), [PG-801](#), and [PG-810](#). See form [PG-850](#) for more information on financial abuse protective orders.
- d. **Section A.6** (page 3). Single Transaction Authorization Petition. A petition for a single transaction authorization can be filed if someone wants to perform a one-time legal or financial transaction that will benefit the respondent, but is not asking for ongoing authority to manage the respondent's finances. If there are multiple protection cases open, the court may combine them into one case in front of one judge.
- e. **Section A.7** (page 3) Jurisdiction. The court needs to know the respondent's "home state" to decide whether Alaska courts have the authority to hear the case. If Alaska is **not** the respondent's "home state," the Alaska court may not have the authority to appoint a guardian and the case may have to be filed in a different state.
- f. **Section A.8** (page 3). Venue. This section helps the court decide if you filed in the correct court location within Alaska. You can find which courts are in which judicial district at [ak-courts.info/dir](#).
- g. **Section B** (pages 3-5). Contacts. Include in this section any people who have information about the respondent's incapacity and needs and current living conditions. The court visitor will try to contact these people for more information to include in the visitor's report to the court. Many of these people (such as certain relatives) are required by law to be notified about the guardianship case.
- h. **Sections C.1 and C.2** (page 5). Diagnoses. If you have any information about illnesses, disabilities, or other conditions that the respondent has been diagnosed with, list them here. Attach any relevant medical records or evaluations that you have. Do not guess if you don't know—in section C.4, you can describe symptoms and behaviors that you have observed apart from a formal diagnosis.
- i. **Section C.4** (page 5-6) Areas of Authority. In these sections, explain what you've observed about the respondent that makes you believe they need a guardian's help in that area of their life. For example, you could write about a time where the respondent had a serious problem, and they were not able to make a rational and thoughtful decision about it or solve the problem safely. You can also explain in these sections what decisions a guardian could make on behalf of the respondent that would improve the respondent's quality of life. You do not need to check all of the boxes—if you think the respondent is able to handle that area of their life, or you can't think of any examples where the respondent needs help in that area, then leave that specific paragraph blank. Remember that the court **must** order the least restrictive option available, which could be a partial guardian with authority only over some areas of the respondent's life.

- j. **Section D** (pages 6-8). Financial Information. You may not have many details or access to the respondent's financial documents at this time. This is fine, just fill in as much as you know. Even the name of the bank where the respondent goes, or a list of the respondent's most valuable possessions, is helpful information for the court visitor to start investigating further.
- k. **Section E.1** (page 8). Need for Conservator. A conservator has authority over managing the respondent's money and property. A conservator can only be appointed if the respondent does not have the capacity to manage their own money and property effectively **and** the respondent has money or property that will be wasted or used up if it is not properly managed. If you are asking for the guardian to have conservator powers as well, you must explain why here. Include what money or property needs to be protected that you know about.
- l. **Sections E.2 – E.5** (page 8-9). Proposed Guardian. You may recommend to the court who should be the guardian. Under the law, the priority for who can be guardian is:
 - (1) the person that the respondent chooses.
 - (2) the respondent's spouse.
 - (3) the respondent's adult child or parent.
 - (4) a relative of the respondent that the respondent has lived with for more than six months during the year before the petition was filed.
 - (5) a relative or friend of the respondent who has demonstrated a sincere, longstanding interest in the respondent's welfare.
 - (6) a private professional guardian.
 - (7) the public guardian (OPA).

After filling in who you think should be the guardian (either yourself or someone else), select the appropriate "priority" box among (1) – (7). On the lines below this list, fill in every person who has an equal or higher priority than the person you nominated to be the guardian. For example, if you are the respondent's adult child, and you want to be the guardian yourself, select "Me (Petitioner)" and check box (3). If the respondent has nominated someone other than you (for example, in a living will), you must list that person because they have higher priority than you. In the same way, you must list the respondent's spouse (if any), because they also have higher priority than you. Finally, list any living parents of the respondent and any other of respondent's adult children, since all of these people have the same (equal) priority as you.

Even if you know that a person with equal or higher priority does not want to be the guardian or is not appropriate to be the guardian, you must still list them on the form. The court will decide whether a person with higher priority is qualified, able, and willing to be the guardian. If not, the court has authority to appoint someone with lower priority. When two or more people have equal priority for appointment, the court will choose the person it considers to be the best-qualified.

- m. **Signature Section** (page 10). Sign and date the petition. Complete the "Verification" section that follows your signature. You must sign in front of a notary public. A court clerk can provide this notary service for you for free when you bring the petition to court. Bring a photo ID for the notary or clerk.

If you don't have access to a notary or court clerk, you can instead fill out *Self-Certification (No Notary Available)* (form [TF-835](#)), swearing or affirming under penalty of perjury that everything you wrote in the petition is true and that you do not have access to a notary. Attach form TF-835 to your petition.

Costs in Guardianship Proceedings

<u>Cost</u>	<u>Who Must Pay</u>
Filing Fee	The petitioner must pay the filing fee, unless the court waives the fee because the petitioner can't afford it. ⁵
Lawyer for Petitioner	The petitioner must pay for the petitioner's own lawyer. It is not required for the petitioner to have a lawyer.
Lawyer for Respondent	The respondent must pay if financially able to afford the lawyer. If the respondent can't afford a lawyer, the court will appoint OPA to represent the respondent, and the state will pay for it. ⁶
Court Visitor	The court will pay for the costs of the court visitor. ⁷
Expert	The court will pay for any newly incurred costs of the expert appointed by the court under AS 13.26.226(c). ⁸
Second Expert Requested	The respondent must pay if the respondent asks the court to appoint another expert to examine the respondent and testify for them at the hearing. However, if the respondent is financially unable to pay this expert, the state will pay. ⁹
Guardian Ad Litem (GAL)	If the court appoints a Guardian Ad Litem, the respondent must pay. If the respondent can't afford to pay, the state will pay. ¹⁰

Note: If the court finds that the petitioner started a case that was malicious, frivolous, or without just cause, the court can order that the petitioner pay for (or reimburse the state for) some or all of the costs of the individuals listed above, including the respondent's lawyer and GAL, the court visitor, and the experts.¹¹

⁵ Administrative Rule 9(f)(1).

⁶ AS 13.26.226(b); AS 44.21.410(3); AS 13.26.291(b), (c).

⁷ AS 13.26.291(a).

⁸ AS 13.26.291(a).

⁹ AS 13.26.291(b), (c).

¹⁰ AS 13.26.041(d); AS 13.26.291(b), (c); AS 44.21.410(2).

¹¹ AS 13.26.291(d).